

# Angus Council

## A Guide to the new Community Asset Transfer Process



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## **1. Introduction**

Angus Council recognises that communities having ownership or control of land or buildings is a powerful tool for communities in achieving their goals and meet the needs of their community. They can develop local services and activities and make their area a better place to live.

The Scottish Government, through the Community Empowerment (Scotland) Act 2015 ("The Act") has provided community groups with a new right to make requests to any local authority 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 aim of this guide is to set out the key points for Angus Council and community groups to consider as a result of the new legislation and to set out the framework that enables and manages the transfer of assets from the Council to the community. It is not designed as a comprehensive manual on the legislation and for those that wish more detail please refer to the full '**Guidance for Relevant Authorities**' provided for them by Scottish Government at [Authority Guidance](#)

While this guide will provide a summary of the main points relating to Community Asset Transfer from the Act we would encourage any community group or organisation wishing to make an application to refer to the full '**Guidance for Community Transfer Bodies**' provided for them by Scottish Government at [Guidance](#).

We also would encourage groups to visit the **COSS (Community Ownership Support Service)** website [Asset Transfer](#). COSS is a Scottish Government funded programme, set up to help community groups throughout Scotland take on land and buildings for their community. They have developed advice, case studies and a range of useful resources based on experience of supporting organisations through existing voluntary schemes. They can also provide support to community bodies in developing their proposals.

Communities Officers from our Local Communities Teams will offer support and guidance to groups who are considering this process and should be the first point of contact.

## **2. Key things you need to think about:-**

What are your objectives – what is it that you want to improve for your community?

Who is your community? Do you have support within your community for your ideas?  
Can you evidence that support?

Do you need land or buildings to deliver those objectives?

Do you want to purchase or lease the land or building, or just have rights to manage, use or occupy it?

If you want to use asset transfer is your organisation eligible?

### **3. Community Transfer Bodies (CTB)**

To be eligible to make an asset transfer request, the community organisation needs to be a 'community transfer body'. The group has to have certain provisions in its constitution or other governing documents before it can make an asset transfer request. An organisation that meets these criteria is called a 'community transfer body.' The organisations 'documents 'must say which community it represents, for more information please see [Asset Transfer](#).

All people who are part of that community must be allowed to be members of the organisation. Most members of the organisation must be from that community and they must decide what the organisation does. Any money the organisation makes must be used to help that community.

A community can be any group of people who have something in common. They may live in the same area ("a geographic community") or may enjoy doing the same thing, or have similar backgrounds ("a community of interest").

**If a community transfer body wants to buy property or land** through asset transfer, they must also become a company, a Scottish Charitable Incorporated Organisation (SCIO) or a Community Benefit Society and they must have at least 20 members.

If a community group can't change its rules to fit the requirements, it can ask the Scottish Ministers to make it a community transfer body by law. This is called being "designated".

For more information see part 5 of the Scottish Government Guidance for Community Transfer Bodies [Guidance](#)

### **4. Assets Suitable for Transfer**

Previously asset transfer was only available for land or buildings that Angus Council had identified as being surplus to requirements. However, the Act allows communities to request whatever property they believe will be most suitable to deliver their objectives. (This includes assets belonging to other public bodies see part 6 of [Guidance](#)). The decision making process provides for a comparison between the benefits of the community body's proposal and the benefits of any alternative, including the current use.

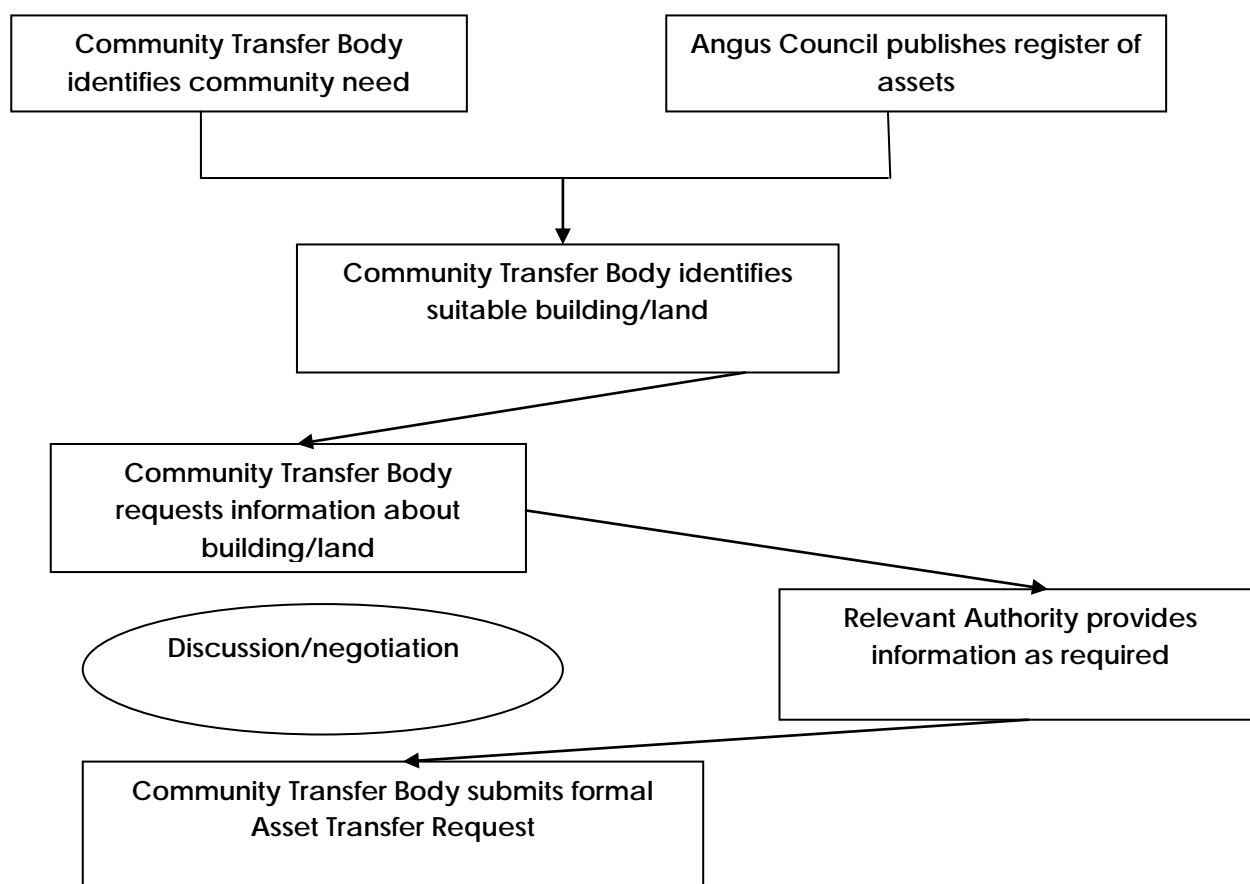
The guidance for community bodies encourages CTBs to start thinking about what they want their project to achieve – for example, to help young people gain new skills through training, create greater community cohesion by providing a place for people to meet or hold events, or improve health and wellbeing by providing access to the natural environment. Then consider whether an asset is required to deliver these aims and look for somewhere that will be suitable. Further advice is offered on this from the Community Ownership Support Service at [www.dtascommunityownership.org.uk](http://www.dtascommunityownership.org.uk)

To help community bodies identify assets that may be available through asset transfer, the Council has made available a register of land which it owns or leases. Please note, while every effort has been made to ensure the accuracy of the register there may be some omissions or error where boundaries and/or ownership of land is unclear, especially where records are old and land has changed hands by statutory powers or reorganisation of public bodies. The register is available at [current list of assets online](#).

### ***5. Land not required for inclusion in Register of Assets***

- Roads – including pavements, footpaths and cycle paths.
- Bus stations and including railways and canals.
- Houses, hostels and lodging houses. This exclusion will not apply to those properties which are empty and available for sale.

## 6. Summary of Initial Asset Transfer process



## 7. Information about land or buildings at the Enquiry Form stage

Prior to the formal application stage, CTBs should find out more about the asset that they are interested in. Given the level of detail required to make a formal application, Angus Council would encourage any CTB to submit an enquiry form and make contact with their local Communities Officer using the enquiry form at [Community Asset Transfer](#).

The pre-enquiry form allows the CTB to enter discussions with the Council through their local community officer, who will make the group aware of what is required should they wish to proceed to a formal application. During these informal discussions Angus Council will make available any relevant information it has such as energy ratings, running costs or structural requirements. It should be noted, however, that Angus Council may not have this information for all properties on the register, some of the information may not be up to date and some professional information may be confidential.

Ultimately it is the responsibility of the CTB to ensure it has all the necessary and relevant information it needs to develop its proposals.

## **8. Making a formal application. What you need to include in an Asset Transfer Request**

An asset transfer request must be made in writing, which can also include email or an electronic form. Angus Council provides an optional pre-enquiry form to complete prior to any application. This helps ensure you are provided with support throughout the process. This can be accessed at [Community Asset Transfer](#).

**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.

## ***9. What happens after making a request***

On receipt of an application we will check if all the necessary information has been included. If it has not, we will write to you advising of what is missing. The process cannot continue until all the required information is received by Angus Council and we will specify a timeframe for this to be completed by.

## ***10. Acknowledgement***

Once all information is received we send you an acknowledgement letter which will set out the validation date (the date on which last information required was received or date request received if complete). This date is important as we then have **6 months** to issue a decision notice although this can be extended provided both parties agree to the extension. The request will go to the next Community Asset Transfer Group (CATG) meeting following the validation date for assessment.

The acknowledgement will also set out;

- an explanation of the timescale for decision notice to be issued (within **6 months** of the validation request unless both parties agree to extension)
- information about the right to appeal to the Scottish Ministers or request a review, as appropriate.



- whether another asset transfer request has already been made in respect of the same land (or part of the same land.)
- whether we consider that we are now prohibited from disposing of the land to any other person.

## ***11. Notifying others of the Request***

We will make copies of the asset transfer request with any documents or information accompanying it available online at [Community Asset Transfer](#) but any personal information will be removed.

We will also notify any tenant or occupier of the land or building about the request and put up a notice about the transfer request online and physically within the vicinity of the land to which the request applies and/or in a place where interested people are likely to see it such as on a community notice board or village shop as well as information on how they can make representations about it.

We will then allow **4 weeks** for anyone to make comments on the proposed application. We will then send copies of any representations to the CTB and they will have **4 weeks** from when the copy was sent to make any comments and return them to us.

## ***12. Making the decision***

The Act outlines what factors have to be taken into account when we decide on an application. These include:

- how the community body's plans will benefit the community
- how any other plans for the land or building might benefit the community (other plans include how the relevant authority is already using it)
- how the plans will affect the relevant authority
- anything that would stop the relevant authority selling or renting the land to the community body
- anything that would stop the community body doing what it plans
- what other people think about the community body's plans.

We will also check that the CTB have the necessary money and skills to carry out their plans. This means demonstrating that they have fully considered not only their ability to deliver the project but to ensure its sustainability. Their identified funding resources must be realistic, include viable business plans where appropriate and how the project will be funded in the longer term. The CTB will need to show that

they have good governance and robust financial systems with members who have the necessary skills and experience to deliver and maintain the project.

### **13. Benefits**

When we assess the benefits of the application we will consider whether agreeing to it would be likely to promote or improve:

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

### **14. Local authority functions**

Where the proposed benefits of an asset transfer request will contribute to achieving our outcomes, or to national outcomes we will take this into consideration at assessment. However, there may be cases in which agreeing to the request would have an unacceptable impact on our ability to deliver our services. This could be direct impact, for example because the transfer to community would physically interfere with the carrying out of operations, or require us to put in place alternative arrangements that substantially increases the costs. Affordability may be a factor, if the cost of the transfer would affect our budget to the extent that it reduced our ability to deliver our functions, even after taking account of the value of the proposed benefits.

### **15. Funding, Valuation and EU State Aid Rules**

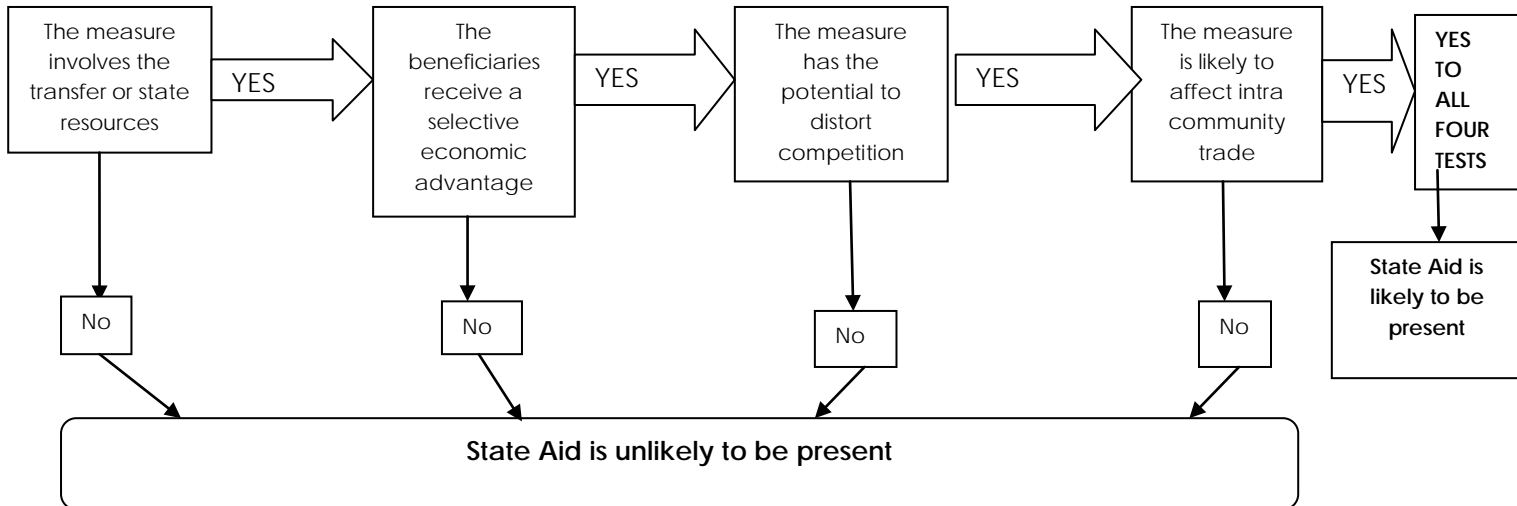
The likely price of the asset is something the CTB will need to consider at an early stage in developing its proposals, along with the initial and ongoing costs of the project. CTBs should not assume that asset transfers will be at a nominal sum.

Both the relevant authority and the CTB are likely to need to understand the 'market value' of the asset for accounting, borrowing or funding purposes as well as Best Value and State Aid assessments. If we already have an up to date valuation we may suggest that this is used as the starting point for discussions to take place. If at any stage a CTB and the council are not able to agree on the approach then they may need to obtain separate valuations.

All asset transfers must comply with State Aid rules. 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 that need to be met in order to establish whether any

intervention is likely to affect trade between Member States. These rules apply to not for profit organisations and activities as well as commercial businesses.

### The four tests summarised

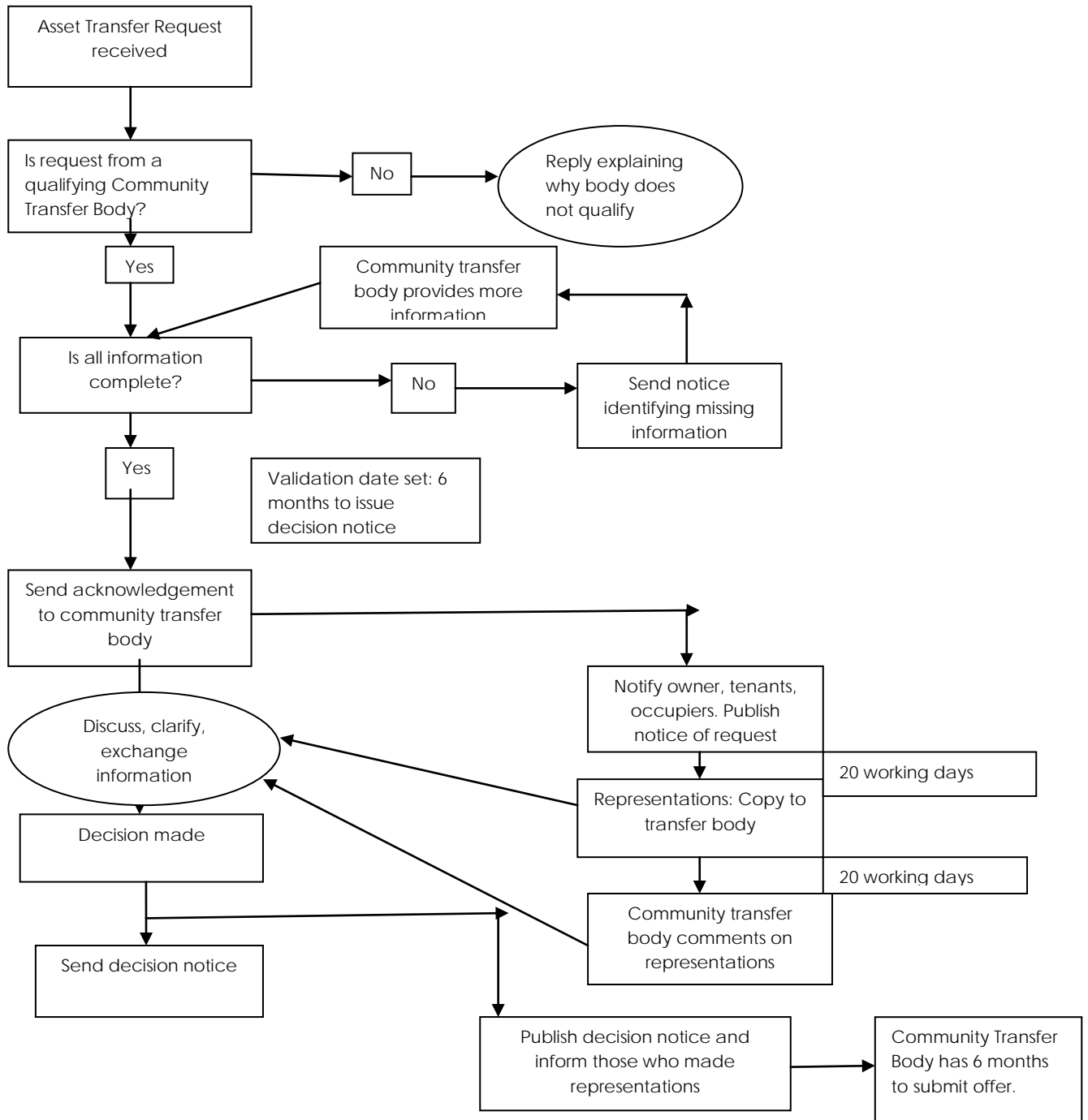


If there is any risk of state aid being an issue the Council will provide advice and assistance at the earliest point possible in the application process. Scottish Government also has a state aid team who can be contacted at <http://www.gov.scot/Topics/Government/State-Aid>

## 16. Decision notice

Once we have made our decision we will issue a decision notice setting out our decision and the reasons for it. Where the decision is an agreement to transfer, this will specify the terms and conditions on which we are prepared to transfer ownership, lease the land or confer the rights requested. It will also state that to proceed with application you will have to submit an offer within at least 6 months from the date of the decision notice.

## 17. Procedure following receipt of an asset transfer request



## **18. Reviews and appeals**

A CTB can request a review of the Council's decision if:

- the transfer 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.

## **19. Review**

Review request decisions will be undertaken by elected Councillors who were not involved in the original decision.

**To request a review a CTB must submit a review request in writing to the Council within 20 working days of 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).

The application for review must include the name, and contact address of the CTB, the land or building to which it relates and the reasons requested for the review along with any additional evidence or documents which the Council doesn't already have.

We will publish the review request and documents online at [Community Asset Transfer](#) and send you an acknowledgement within 10 working days of receiving it.

We will also give notice of the review request to anyone who made representations on the original transfer request. These people are described as 'interested parties.'

The notice to interested parties will state the name of the CTB and the land to which the asset transfer relates. We will consider the representations previously made along with any new comments or documents submitted provided they have been submitted within 10 working days of the date of the notice. The CTB will also be sent a copy of any representations with a date and format for making any comments on them. The CTB will have 10 working days to provide any additional comments.

## **20. Further evidence**

Once we have received the additional representations the Council may have enough information to make a decision on the review. It may, however, decide that further information is required which could take the form of further written information, a hearing session or other procedures such as a visit to the land. We will write to the CTB to explain what further information is required and in what format. This will be sent to all relevant parties who will have 10 working days to provide any comments.

## **21. Decision**

When deciding on the review we will consider the request in the same way as the original decision, taking into account the same factors and benefits of the request and alternative proposals.

Once complete the review panel will confirm the original decision or modify it or any part of it or substitute a different decision. We will issue a new decision notice within 6 months of the date the application for review was made, or a longer period if agreed to by the CTB. We will also publish the decision online and inform every person who has made written representations in relation to the review.

If the request is refused or no decision is made within the time limit or the terms and conditions are not acceptable the CTB can appeal to the Scottish Ministers see section 22.

## **22. After Agreement**

Once agreement has been reached with a CTB, the CTB must make an offer to take ownership of the land, lease it or take up the rights covered by the request. This must be done by the date stated in the decision notice, which has to be at least 6 months from the date of the decision notice.

If no offer is made by the date set in the decision notice, and the CTB 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 and the Council is free to keep or dispose of the asset as it wishes.

## **23. Conclusion of contract**

Once we receive the CTBs offer there may be further negotiations required 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.

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 transfer, price or rent and 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 grant of planning permission.

#### ***24. No contract concluded***

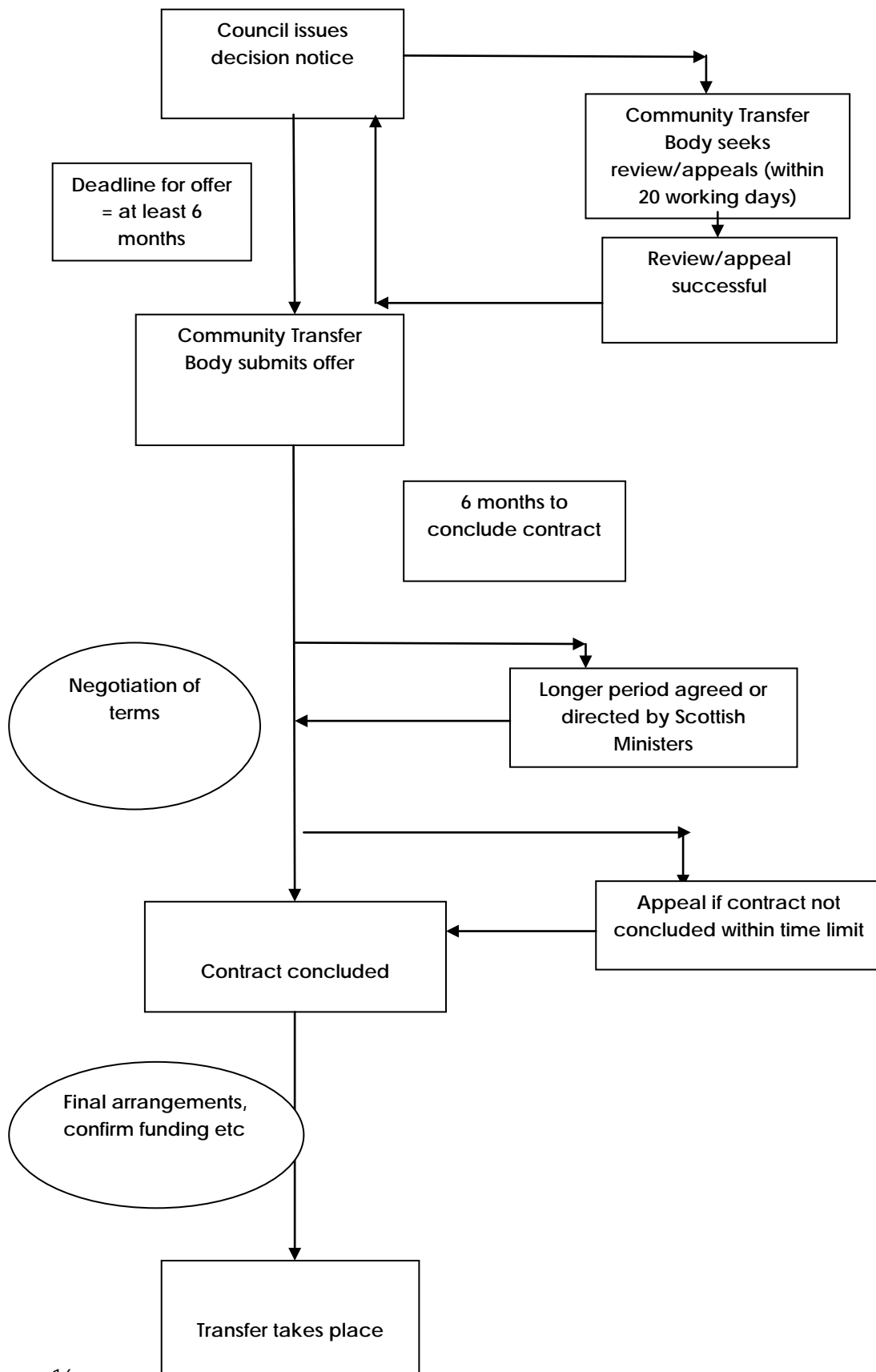
If no contract is concluded within 6 months of the offer, and no other action is taken, the process is at an end. Sometimes this is by mutual consent – circumstances may change, funding or other requirements may not be secured, and it may no longer be practicable to take the project forward.

If the CTB believes progress can still be made, they have 3 options available to the CTB to keep the request alive.

- Agree an extension with the Council,
- Apply to the Scottish Ministers for a direction to extend the period, or
- Appeal to the Scottish Ministers to determine the terms and conditions of the contract.

If the end of the period is reached, either the original 6 months or an extended period and no contract has been concluded, the CTB can appeal to the Scottish Ministers. This must be done within 10 working days of the end of the period.

## 25. After Agreement summary of process





## ***26. Scottish Ministers Appeal***

The Scottish Ministers must appoint 3 people to review decisions made by Ministers. At least 2 of them must not work for the Scottish Government. The Ministers can ask anyone for more information to help them make a decision. This can be requested in writing or they may hold a meeting so people can make representations. They may also decide to visit the land or building the request relates to.

They may decide to confirm the original decision, modify a part of it or substitute it for a new decision. They will issue their decision to the CTB stating what the new decision is.