

The Highland Council
Communities and Partnerships Committee
23 March 2016

Agenda Item	11 (c)
Report No	CP/08/16

Community Empowerment Act – Asset Transfer Requests Update

Report by Head of Policy and Reform

Summary

The Community Empowerment (Scotland) Act 2015 provides for community bodies to request ownership, lease, management or use of publicly owned buildings or land whether or not they are available for sale or deemed surplus to requirements by the owning body. It is likely that the Council and its partners will need to refresh their asset transfer policy and process to meet the new purpose and approach the Act brings. The Community Planning Partnership Board (CPP) agreed that we should design a common process for Highland. Members are asked to consider and comment on the issues raised in the report.

1 Background

- 1.1 The Council has supported 34 asset transfers to community bodies from the Council between 2010 and 2015¹. The intention of the legislation is to make asset transfer more straightforward for community bodies, enabling more assets to transfer into community ownership. The development of an asset transfer policy is a commitment in the Highland First Programme.
- 1.2 The Community Empowerment (Scotland) Act 2015 provides for community bodies to request ownership, lease, management or use of publicly owned buildings or land whether or not they are available for sale or deemed surplus to requirements by the owning body. It applies to assets held by 17 listed bodies and includes all the public bodies participating in the CPP². The initiative is placed with community bodies and they are to specify the benefit that would come from the asset transfer.

2 Asset Transfer Request-Scope and Requirement

- 2.1 The asset owning body is to consider whether the transfer would promote or improve:
- economic development;
 - regeneration;

¹ Highland Council property database of assets transferred to community groups (January 2016)

² The public bodies affected by this part of the Act are: Boards of management of a college of further education and of further and higher education; the British Waterways Board; the Crofting Commission; a Health Board; HIE; a local authority; National Park Authority; Scottish Courts and Tribunals Service; Scottish Enterprise; SEPA; SFRS; Scottish Ministers; SNH; Scottish Police Authority; Scottish Water; a Special Health Board; a Regional Transport Authority. Provisions are included for supporter involvement in football clubs.

- public health;
- social wellbeing;
- environmental wellbeing; and/or
- reduce inequalities; and
- involve people experiencing disadvantage.

2.2 If an asset transfer is agreed the public authority must make an offer to the community body within 6 months, unless the community body and public authority agree to an extension. Public bodies are encouraged to take the wider benefits of community proposals into account when considering disposal at or below market value. The price for sale can take into account the need to receive a certain level of capital receipts to fund other developments and the benefits of those developments can be taken into account in comparing benefits to a disposal at less than market value.

2.3 Public bodies must also respond to information requested about the assets it holds. They must also establish and maintain a register of land that is owned or leased by them. Annual reports are also to be published (by 30 June for the previous financial year) setting out the number of requests received, agreed to and refused, the number that resulted in transferring ownership or leases, the number of appeals made and their outcome, the action taken to promote asset transfer requests and the support offered to community bodies in making requests.

3 Community Planning Partnership Approach.

3.1 Given the experience and resources that exist across the CPP, the CPP Board agreed in December 2014 that we should design a common process to comply with the Act and to support community groups in a consistent way. The aims of the common process are to:

- design a transfer process that makes the process clear, transparent and with a view to enabling more transfers;
- support communities through the process, before, during and after transfer and recognising that for some communities, leasing may be a route to ownership in the longer term.

3.2 It is clear that the legislation is seeking to bring a change in purpose to the use of asset transfer by public bodies. To date asset transfer has usually focussed on vacant properties and been linked to bodies rationalising their estate. The key drivers for asset transfer are now community benefit that will drive an improvement in outcomes particularly in our poorest communities.

3.3 The Commission on the Future Delivery of Public Services (Christie Commission) highlighted two key priorities for us:

- Maximising scarce resources by utilising all available resources from the public, private and third sectors, individuals, groups and communities
- Identifying and targeting the underlying causes of inter-generational

deprivation and low aspiration

Asset transfer could be a key tool to achieving these.

- 3.4 In considering how we organise and support an asset transfer process that will achieve these key tasks we need to consider:
1. How we support communities to work with public bodies to take a community wide view of the assets required in a geography. This will require a rationalisation of assets that draw funding from the public purse regardless of which sector they exist in.
 2. To help communities develop a sustainable model for assets they take on.
 3. To promote an approach that focuses firstly on outcomes, secondly on services to deliver these and then on the assets required to do this.
 4. To target support at communities that have less capacity to engage in the process described above.

4 How do we do this?

- 4.1 Partners will have in place or will require to develop an asset transfer process that is fit for purpose in legal, technical and financial aspects. However these processes require to be repurposed to deliver the improvements in paragraph 2.1 above.
- 4.2 This will require the strategic direction of key resources to support this process-
- Social enterprise and economic development support and advice;
 - Community development resource to support across partners and advise communities; and
 - Targeted use of development funding

A helpful “Asset Transfer Route Map” from the Scottish Government supported Community Ownership Support Service is provided at appendix 1
<http://www.dtascommunityownership.org.uk/about-coss>

- 4.3 The support and advice highlighted in paragraph 4.2 above will largely require to be available at a local level, be ongoing and with local credibility and knowledge. The CPP has made some progress in creating the circumstances that will allow local partnerships to develop. For example its ongoing work to plan community learning and development both strategically and locally. This type of approach now requires to be applied to other themes.
- 4.4 The governance arrangements for asset transfer will need to be reviewed to enable local Member and/or local CPP views to influence the decision. This can be considered when the process is more fully designed and the statutory guidance is available. Members on the Asset Management Board would consider this issue as well. Any changes to the scheme of Delegation would be considered by the Council.

5 Implications

5.1 Resource: There is no new or additional resource for designing the asset transfer process. It requires officer time. The Act enables a decision on disposal at or below market value.

Legal: This will assist us in meeting the requirements of the Community Empowerment Act

Equalities: The process would consider how best to ensure that people with protected characteristics are supported to make requests.

Climate Change, Gaelic and Rural implications: no new implications are identified

Risk: There is a risk that the Council does not meet its income targets from the sale of assets, although the Act enables disposals at market value where the receipts from the sale can be deployed in a way that provides greater public benefit than from disposal below market value. There is a risk that the Council does not enable further transfers to community bodies, but by working with partners to share resources and expertise to support community bodies this risk should be mitigated.

6 Recommendation

6.1 Members are asked to consider and comment on the approach being taken to support further asset transfers in Highland.

6.2 Members are asked to note that further work is required on the approach and governance arrangements and that it will have to comply with the statutory guidance when it is available. Further reports can be made to this Committee as well as the CPP Board and the Asset Management Board.

Designation: Community and Democratic Engagement Manager, Highland Council

Date: 14/03/16

Author: Pablo Mascarenhas,
Background Papers:

PHASE 2

PHASE 3

PHASE 1

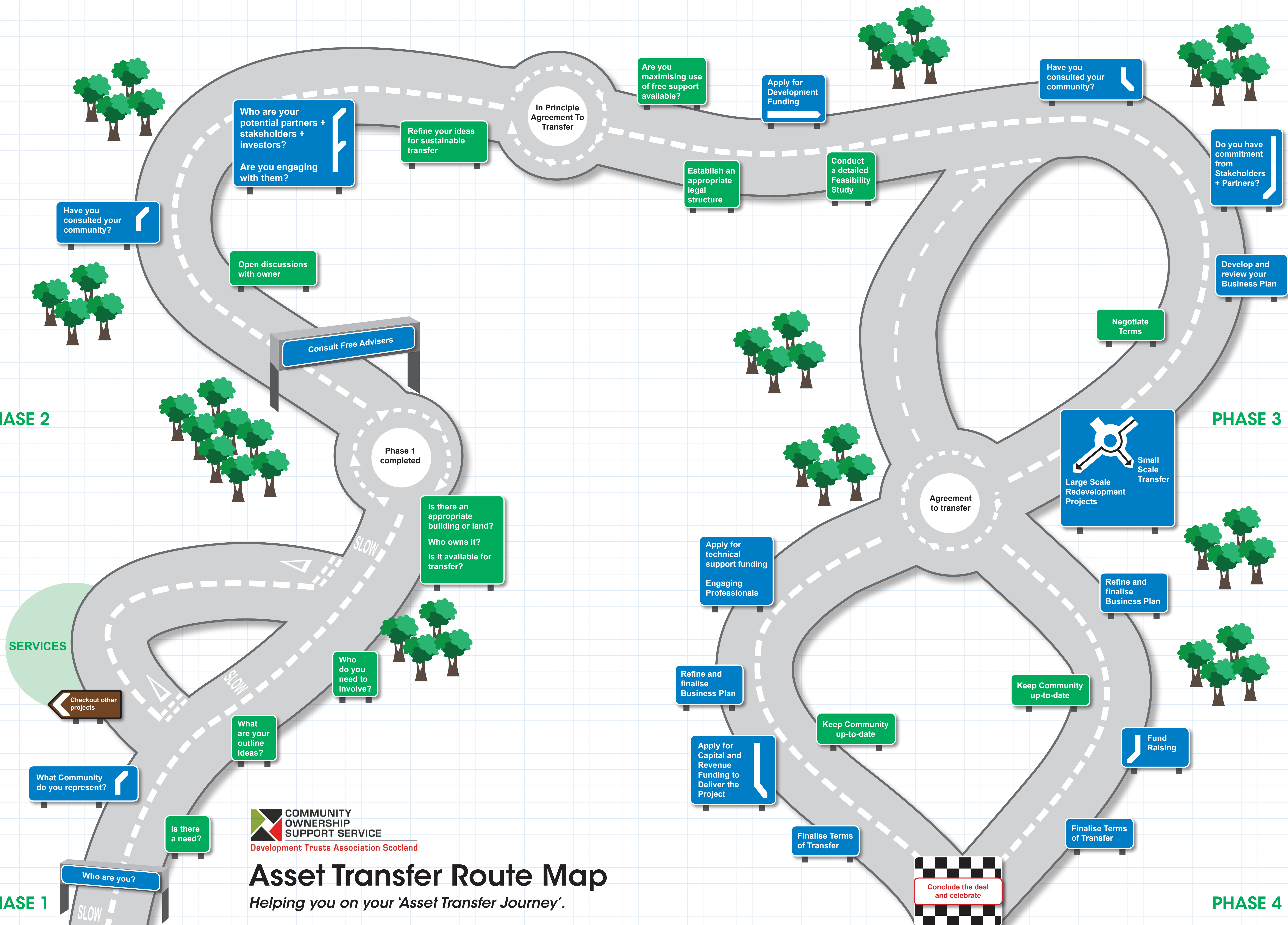
PHASE 4

SERVICES



Asset Transfer Route Map

Helping you on your 'Asset Transfer Journey'.



Phase 3

Use Free Advisers

At this stage the organisation should have in place an in-principle agreement from the owner to transfer.
www.dtasccommunityownership.org.uk
- So you want to take on an asset?
The People and Will it deliver? Section 1: Initial Assessment

Establish an appropriate legal structure

Now that you know what you are planning to do with the building/land and what services/enterprise activities you wish to run, it is time to either check that your current legal structure is appropriate or set up a new vehicle (legal entity) to allow you to deliver on your ideas. There are many example model constitutions available for you to adapt and you may not require costly legal advice, although it is advisable to have a legal opinion to finalise documents. Further advice, templates and support on a variety of different legal structures suitable for community asset ownership is available from DTAS/COSS, SCVO and Third Sector Interface for your area. (See resources section for website links.)

Apply for Development Funding

Once you have all of the information collected into a written initial assessment, identify and apply for the funding your group needs to develop the project. This can include funding for a detailed feasibility study, further consultation with your community and for business planning.

Conduct a detailed Feasibility Study

Once you have funding in place, tender for a detailed feasibility / community consultation / business plan. In some cases this can all be completed by your group/ community. However, depending on the scale of the project it is likely that you will need to engage a professional to bring the project to a point where you can apply for funding to secure and develop your land/building and deliver the project.

Have you consulted your community?

Keep your community up to date with developments within the project. If changes need to be made or if the group feel that changes are appropriate, consult with the wider community and keep them involved as much as is feasibly possible. This is also a good time to go back to the community with recent developments to keep them informed.

Do you have commitment from Stakeholders + Partners?

As highlighted stakeholder/partners involvement is essential for building consensus about proposals and addressing objections or concerns in advance. Major decisions are likely to be taken and it is in everyone's interests that all parties are aware of these to ensure that any problems arising are identified at this stage and dealt with.

Develop and review your Business Plan

Once you have your findings from the studies you have carried out and established your legal entity, all this relevant information should be added to your business plan along with any other changes which may be important.

Negotiate Terms

By now you will have a good idea of what you will be delivering, who with and what you need to ensure it is financially viable. These elements are all invaluable when negotiating the terms of the transfer.

Remember for this to be an ASSET TRANSFER there needs to be either a financially viable building/land being proposed for transfer or a financially viable business model being proposed for the building/land, otherwise this is potentially the transfer of a LIABILITY. The agreement of the terms of the transfer are of immense importance.

Agreement to transfer

Owner and organisation agree to the terms and conditions of the transfer of the building or land.
www.dtasccommunityownership.org.uk
So you want to take on an asset?
Sections: Will it deliver? to The Law

Phase 2

Consult Free Advisers

Begin speaking with publicly funded advisers who can give you free help and guidance.
www.dtasccommunityownership.org
- So you want to take on an asset?
Sections: Are you ready? and What Asset?

Open discussions with owner

After you have identified your asset and the owner, check if the owner has designated the building/land as suitable for sale/transfer/lease. If there are no published plans for its disposal then contact the owner and highlight your interest in taking ownership of the building/land. If not currently for sale, you might wish to consider registering a community interest in the land through Community Right to Buy. Contact Community Assets Branch at www.scotland.gov.uk

Have you consulted your community?

Community involvement should be planned from the start of the project and should be an ongoing part of the process. Effective community involvement is vital to ensuring your project is a success.

Involvement can range from informing and consulting to active engagement in taking decisions and implementing the project. The degree of involvement and the way of involving people has to be matched to your community, the needs of your project and the stage it is at.

Establish a written plan of community engagement so you are able to keep people regularly informed of progress.
www.dtasccommunityownership.org.uk
- Publications – Involving Your Community

Who are your potential partners + stakeholders + investors?

Are you engaging with them?

Think about, and write down a list of the people and organisations who are already involved in the project, will become involved as you develop and might be interested in supporting you in the future. All of these are stakeholders in your project and some could be potential partners if you find a mutual interest or can provide mutual benefit.

Stakeholder/partner involvement is essential for building consensus about proposals and addressing objections or concerns in advance. From this point of view any local politicians, local community groups and organisations that are likely to support the idea of community owned land and buildings are essential to the process, particularly as asset projects often take a long time to implement. Identifying potential partners is also very important as it will lend weight to any business plan, sometimes actually making it viable and will show your willingness to work in partnership with others. If you plan to apply for grants speak to the funding bodies and/or agencies involved and outline your project. This will give you an early indication of what they will and won't fund.

Refine your ideas for sustainable transfer

You have your original ideas on paper and you will now have gathered more information on how these ideas could be developed further. This is the time to go back to the original list of ideas and purposes and see if you need to refine anything. The main thing at this stage is to see if your original ideas will generate sufficient income to allow you to keep going in the longer term. This could include a combination of income from trading, Service Level Agreements and other fundraising activities.

You also need to check at this stage that you have all the skills in your volunteer group to deliver what you want to do. If not, you may have to invite people with these skills into your group or find finance to employ someone to work with your group.

In Principle Agreement To Transfer

Most public bodies operate a two stage process where, if the community group is eligible and the outline proposals look viable, an in principle agreement to transfer will be given. This constructive approach ensures that community groups do not undertake unnecessary work for a project that is unlikely to be supported.

Phase 4

Large Scale Redevelopment Projects

LARGE SCALE PROJECTS
If you DON'T have the finance in place to meet the purchase price, finalise your business plan and any technical support you require then take this route

SMALL SCALE TRANSFER
If you have most of the finance in place to meet the purchase price, finalise your business plan and employ any technical support you require then take this route

Apply for technical support funding

If your project needs professional input apply for additional funding. Depending on your project aims, this may involve architects, surveyors and other specialist services.

Engaging Professionals

Refine and finalise Business Plan

Add all necessary detail to the plan and agree to its finalised content. Always get a person(s), not connected to the project in any way to read over your final draft. The plan should be easily understood and the person(s) carrying out the final review should be able to ask you questions on the content. This helps you to 'test' the plan before wider distribution.

After final review of the business plan and final consultation, if issues arise which mean that you need to gather additional information/research there may be a need to go back to raise additional funding to complete the transfer.

Apply for Capital and Revenue Funding to Deliver the Project

If your project requires finance for costs which are fixed ie, one off expenses such as the purchase of land/buildings, construction or refurbishment and repair works then these applications should be made here.

Keep Community up-to-date

As before, it is essential to keep your community informed and engaged. You should have a plan in place for communication with everyone so remember to provide updates on progress even if you are really busy with planning and development. You may want to deliver a presentation to your community at this stage to give the opportunity to clarify any queries and invite participation.

Fund Raising

Small Scale Transfer
If your project needs some additional funding quickly to allow you to complete the transfer you can find alternatives to grant applications for smaller amounts. This could include a range of fundraising activities from raising money from individuals to local company fundraising. This can be a useful thing to do and can provide further evidence community support.

Refine and finalise Business Plan

Agree all terms and conditions. This should be approved with all the relevant professional input that your group require

Conclude the Deal and Celebrate

All legal papers are complete and the transfer goes through. After you take ownership, depending on your project, ongoing support can come from a variety of places. Connect at an early stage in your planning with appropriate organisations and funders to establish what support you will be able to access post transfer.

Make plans and celebrate your success!

Phase 1

Who are you?

Are you an individual or group of people who want to organise others in your community to secure the potential benefits from the development of land and building assets? This could be saving a local building from closure and demolition, helping to meet the needs of the community through an asset or creating employment by developing the space for new enterprises.

Is there a need?

When considering taking on an asset it is essential that you are sure this asset is indeed necessary for the delivery of your project. What unique opportunities will owning this asset bring to the delivery of your project? And what benefits might it bring for your group and community more widely? Be careful not just to create wish lists – this is about being able to demonstrate a clear need.

What Community do you represent?

Define your community and be inclusive. You need to be clear from the beginning what area your community covers (this is sometimes defined formally in an organisation's constitution). It can be more challenging to define it in a larger urban area. For rural communities that cover a wide geographic area, including different distinct communities can also be challenging and you may have to treat separate settlements differently whilst conveying the same message.

What are your outline ideas?

You may be looking to take on an asset for any one of a number of reasons. Get your ideas down on paper so you can relay them to others and gather support and new ideas too. Whatever your group's starting point and aspirations, it is important to be clear at the outset what the project aims to achieve and why. It does not mean that things can't change later but having the original idea written down will help you keep your purpose in mind as you progress.

Checkout other projects

Identify similar projects that have gone through this process and speak to them about their experiences. This is extremely important as it can speed up your processes and save you a lot of time. You can learn so much from what others regard as their mistakes!

Who do you need to involve?

Look at the people you currently have backing you. Think about carrying out a skills audit. This helps to identify skills gaps, allowing you to encourage others with the additional skills you need to come on board and help.

Is there an appropriate building or land?

It is essential that you identify at an early stage which property is the right one to deliver your project. Before you spend time and resources exploring the viability of a specific asset in detail, carry out your own site options appraisal.

Who owns it? Is it available for transfer?

Identify who owns the property or land you are interested in taking into community ownership. Seek local knowledge, talk to your local authority or refer to the Registers of Scotland for a search on the information they hold.