



## **Community Asset Transfer Process**

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## **1. Introduction**

The Community Empowerment (Scotland) Act 2015 introduces a right for community bodies to make requests to NHS Dumfries and Galloway (Scottish Ministers) for any land or buildings they feel they could make better use of. Community bodies can request ownership, lease or other rights, as they wish. The Act requires the board to assess requests transparently against a specified list of criteria, and to agree the request unless there are reasonable grounds for refusal. This shifts the balance of power clearly towards the community body.

The process refers to properties within the ownership of the Board. Where Health and Social Care Partnership buildings are owned by Dumfries and Galloway Council or where buildings are subject to a lease from a 3<sup>rd</sup> party this guidance is not applicable.

The process adopted by the Board will follow the detailed guidance published by Scottish Government. The Boards web page will provide a direct link to the Scottish Government web page for Community Transfer Bodies. The following provides a summary of the process which will be adhered to in respect of community asset transfers. This should be read in conjunction with the flow chart provided at Appendix A

## **2. Community Asset Transfer – Procedure**

Part 5 of the Community Empowerment (Scotland) Act 2015 allows a community transfer body to make an asset transfer request to the Board. Community Transfer Bodies are encouraged to contact the Board and discuss their ideas at an early stage with Estates and Property officers. This may be when they have identified an asset they are interested in, or to discuss their ideas and needs and see whether any suitable assets are available.

At this stage the Head of Estates and Property will assign a “Support Lead” to act as the point of contact and to provide guidance to the Community Transfer Body in respect of the process. The General Manager for Facilities and Support Services will undertake a review of the potential asset transfer request and will discuss with the wider GM group. A “lead GM” will be nominated to review the application and consider the application.

## **3. Process Ownership and Governance.**

The asset transfer process (by sale or lease) will be managed as a property transaction by the Estates and Property Department and will follow the normal governance routes for Board Property Transactions. The decision making process for the asset transfer request will be lead by a nominated General Manager who will assemble a group with the necessary

skills and experience to determine the application. The group will require to have financial, legal and property representation in addition to service specialists with experience in the field of the Community Transfer Body or with particular experience of the asset transfer process. This support may be drawn from out with NHS Dumfries and Galloway

#### **4. Register of land**

A request can be made in relation to any land which is owned or leased by the Board. In order to facilitate the process the Board publishes a comprehensive asset list on its web-page. In addition it will endeavour to provide further details on request about its property from qualifying Community Transfer Bodies. The Head of Estates and Property will ensure that the asset list is maintained.

#### **5. Making a Request**

A contact e-mail address is provided on the Boards web page to enable Community Transfer Bodies to make contact, access and discuss the process.

A model request letter is provided on the Board's web-page. A copy is included at appendix-B

The Community Transfer Body can ask to buy or lease the land, or to have other rights, for example to occupy or use the land for a particular purpose.

A Community Transfer Body must include specific information information in its request. This includes the reason for making the request, the benefits of the proposals, and the price they are prepared to pay.

#### **6. Acknowledgement**

Once the necessary information has been received and validated, the request will be formally acknowledged by the assigned lead General Manager. The date of the acknowledgement is the "validation date" used for monitoring the subsequent decision making process. The request letter and accompanying evidence will be published on the Board's web-page along with the acknowledgement.

## **7. Publication of documents**

Copies of the asset transfer request and any documents or information accompanying it will be published on the Board's web-page. Any representations made about the request will also be published on the web-page. The Corporate Business Manager will be responsible for publication and upkeep of all asset transfer documents on the web-page

## **8. Notification and representations**

There is a requirement for the wider public, neighbours and asset users to be made aware that an asset transfer request has been made, and of how they can make representations about it. This must be done as soon as practicable after the validation date (the date the completed request was received).

There are a wide variety of notification methods which will include direct notification to service users/ tenants, publication on line, notice boards, or attached directly to the property or in the vicinity of the property. The lead "Contact Point" will be responsible for ensuring that notifications are issued in an appropriate fashion.

Notices will include the following information

- state that an asset transfer request has been made
- identify the community transfer body making the request and the land to which the request relates
- give a brief description of the nature of the rights requested and how the Community Transfer body propose to use the land
- State that the asset transfer request and associated documents can be inspected on the Board's web-page.
- State those representations about the request may be made via a provided e-mail address, and by what date. This must be at least 20 working days after the notice is given or published

The notice should also advise that all representations will be copied to the Community Transfer Body for their comments, and published.

## **9. Prohibition on disposal of land**

Once an asset transfer request has been made, the Board is not allowed to transfer the property to anyone else until that request process has been completed, including any

appeals. This does not apply if the property was advertised for sale, or negotiations had started to transfer it to someone else, before the asset transfer request was made

## **10. Valuation**

The likely price of the asset is something the Community Transfer Body will need to consider at an early stage in developing its proposals, along with the initial and ongoing costs of the project. The Support Lead will give an indication of the Boards expectations in terms of price at an early stage in discussions, if possible. Valuation information will be provided by the Estates and Property Department.

Community transfer bodies should not assume that asset transfers will be at a nominal sum.

A market value valuation of the property will be required by both parties. To reduce costs this should be completed jointly wherever possible. A market value is also required for Best Value and potential State Aid assessments.

The Board is required to secure Best Value in their operations and activity, including when disposing of or letting property. The Board has the ability to dispose of property at less than market value where there are wider public benefits to be gained. This is set out in the Scottish Public Finance Manual.

## **11. Decision making Process**

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

The act has a presumption in favour of the community asset transfer process. As a consequence where buildings are formally declared surplus by Board and a Community Transfer Body agrees to meet the market valuation a decision to recommend acceptance of an asset transfer request in most cases can be carried out fairly rapidly. This will be undertaken by the lead GM for the request and the Estates and Property Department with due consultation with “property advisors” and Central Legal Office. Where buildings are not surplus or where there the asset transfer request is for a sum less than market value of the asset the lead GM will require to assemble an Asset Transfer Assessment Group and agree

in advance a scoring mechanism to consider the request in detail. The group will include finance, legal, and property expertise alongside service users or other specialists who can assist with the value assessment of the proposed outcomes and community benefits.

In deciding whether to agree to or refuse the request, the Asset Transfer Assessment Group must consider the following things:

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

The Asset Transfer Assessment Group must compare the benefits of the proposal in the request to the benefits of any alternative proposals, whether those come from the Board itself or anyone else, and consider how the potential benefits relate to the functions and purposes of the Board, and any other matters they consider relevant. The outcome of the review process will be discussed with the Board Management Team prior to issue of the final decision notice.

## **12. Decision notice**

When the Asset Transfer Assessment Group has made its decision, it will issue a "decision notice" setting out its reasons for agreeing or refusing to the request. The group will require to fully assess non-financial benefits, and if necessary the inclusion of contractual conditions to protect any discount given. These conditions will be set out in the decision notice and will form part of the settlement offer.

Where the terms and conditions in the decision notice are significantly different from those included in the request, and are not acceptable to the Community Transfer Body, they can appeal or request a review

A decision must be reached within six months of the validation date. A longer period can be mutually agreed between both parties. If no decision notice is issued within this time, the community transfer body has the right to request a review or appeal to the Scottish Ministers, as appropriate. Model notices of agreement and refusal are included at appendix C and D

### **13. Community Transfer Body's Offer**

Where the Board has issued a decision notice agreeing to an asset transfer request the following steps apply. (The same will apply where the request was agreed following a review or appeal.)

In response to the decision notice, the Community Transfer Body is required to submit an offer to take ownership of the land, lease it or take up the rights covered by the request. They must do this by the date stated in the decision notice, which will be a minimum of 6 months from the date of the decision notice. The community transfer body can, of course, submit their offer at any point after the decision notice is issued. It may take much less than six months in straightforward cases.

The offer must reflect the terms and conditions set out in the decision notice. The offer can also include other reasonable terms and conditions that may be needed to make sure the transfer goes ahead within a reasonable time.

If no offer is made by the date set in the decision notice, (and the community transfer body does not appeal or request a review in relation to the terms and conditions within 20 working days of the decision notice), the process is deemed to be at an end.

If the Board agrees to the request, there is a process to negotiate the final contract for transfer. This can allow time for the community body to confirm funding before the final transfer takes place. The negotiation and conclusion of the contract will be undertaken by the Estates and Property Department in accordance with the Property Transactions Handbook

### **14. Conclusion of contract**

Once the Community Transfer Body's offer has been received there will be further negotiations with the Estates and Property Department 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 solicitors to agree the final wording, although for other rights the process may be much simpler.

## **15. Reviews and Appeals**

A community transfer body can seek a review or appeal to the Scottish Ministers under section 85 of the Act if:

- the request is refused,
- no decision is given within the time allowed, or
- The Community Transfer Body does not agree with conditions imposed by the Board.

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

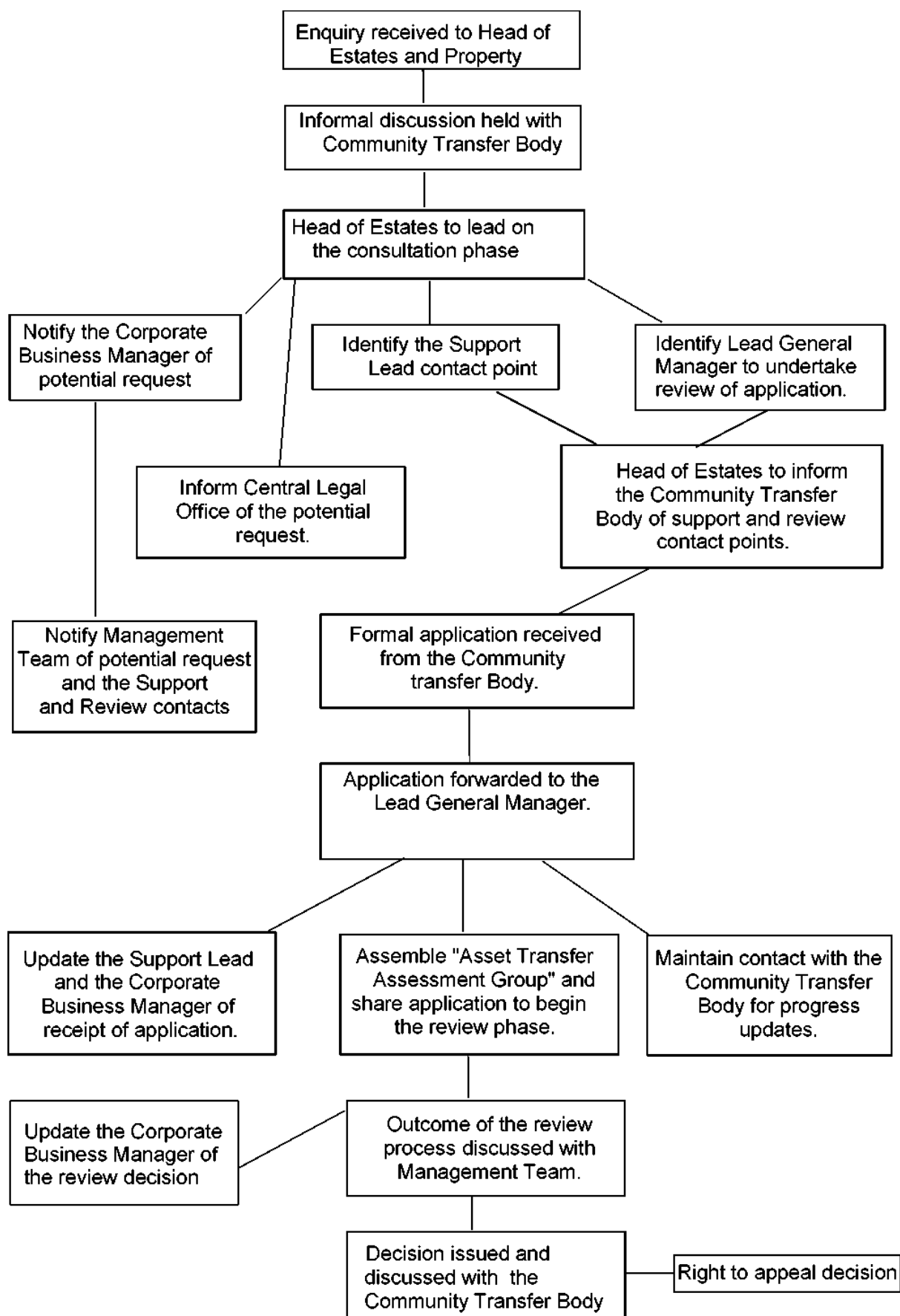
## **16. Reporting**

At the end of each year the Corporate Business Manager will prepare and publish a Board report on the number of requests it has received and the number which have been agreed, refused, appealed etc. It must also report on action it has taken to promote the use of asset transfer requests and to support community transfer bodies to make requests.



## Community Asset Transfer Flowchart

## Appendix A



## **Appendix B - Model asset transfer request form**

**NHS Dumfries and Galloway**

**Community Empowerment (Scotland) Act 2015**

**ASSET TRANSFER REQUEST FORM**



### **IMPORTANT NOTES:**

**This asset transfer request form can be used to make an asset transfer request.**

**You do not need to use this form to make an asset transfer request, but using it will help you to make sure you include all the required information.**

**You should read the asset transfer guidance provided by the Scottish Government before making a request**

**You are strongly advised to contact NHS Dumfries and Galloway to discuss your proposals before making an asset transfer request.**

**When completed, this form must be sent to the Head of Estates and Property, NHS Dumfries and Galloway, Mountainhall Treatment Centre, Bankend Road, Dumfries, DG1 4AP**

**This is an asset transfer request made under Part 5 of the Community Empowerment (Scotland) Act 2015.**

**Section 1: Information about the Community Transfer Body (CTB) making the request**

1.1 Name of the CTB making the asset transfer request

1.2 CTB address. This should be the registered address, if you have one.

Postal address:

Postcode:

1.3 Contact details. Please provide the name and contact address to which correspondence in relation to this asset transfer request should be sent.

Contact name:

Postal address:

Postcode:

Email:

Telephone:

☐ We agree that correspondence in relation to this asset transfer request may be sent by email to the email address given above. *(Please tick to indicate agreement)*

*You can ask the relevant authority to stop sending correspondence by email, or change the email address, by telling them at any time, as long as 5 working days' notice is given.*

- 1.4 Please mark an “X” in the relevant box to confirm the type of CTB and its official number, if it has one.

	Company, and its company number is .....	
	Scottish Charitable Incorporated Organisation (SCIO), and its charity number is .....	
	Community Benefit Society (BenCom), and its registered number is .....	
	Unincorporated organisation (no number)	

**Please attach a copy of the CTB’s constitution, articles of association or registered rules.**

- 1.5 Has the organisation been individually designated as a community transfer body by the Scottish Ministers?

No ☐

Yes ☐

Please give the title and date of the designation order:

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- 1.6 Does the organisation fall within a class of bodies which has been designated as community transfer bodies by the Scottish Ministers?

No ☐

Yes ☐

If yes what class of bodies does it fall within?

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## **Section 2: Information about the land and rights requested**

2.1 Please identify the land to which this asset transfer request relates.

*You should provide a street address or grid reference and any name by which the land or building is known. The Boards register of land (asset list) is provided on the website.*

*It may be helpful to provide one or more maps or drawings to show the boundaries of the land requested. If you are requesting part of a piece of land, you must give a full description of the boundaries of the area to which your request relates. If you are requesting part of a building, please make clear what area you require. A drawing may be helpful.*

2.2 Please provide the UPRN (Unique Property Reference Number), if known. This information is provided on the register of land

UPRN:

### **Section 3: Type of request, payment and conditions**

3.1 Please tick what type of request is being made:

☐

for ownership (under section 79(2)(a)) - go to section 3A

☐

for lease (under section 79(2)(b)(i)) – go to section 3B

☐

for other rights (section 79(2)(b)(ii)) - go to section 3C

#### **3A – Request for ownership**

What price are you prepared to pay for the land requested? :

Proposed price: £

Please attach a note setting out any other terms and conditions you wish to apply to the request.

#### **3B – request for lease**

What is the length of lease you are requesting?

How much rent are you prepared to pay? Please make clear whether this is per year or per month.

Proposed rent: £                      per

Please attach a note setting out any other terms and conditions you wish to be included in the lease, or to apply to the request in any other way.

### 3C – request for other rights

What are the rights you are requesting?

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Do you propose to make any payment for these rights?

Yes ☐

No ☐

If yes, how much are you prepared to pay? Please make clear what period this would cover, for example per week, per month, per day?

Proposed payment: £	per
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Please attach a note setting out any other terms and conditions you wish to apply to the request.

## **Section 4: Community Proposal**

4.1 Please set out the reasons for making the request and how the land or building will be used.

*This should explain the objectives of your project, why there is a need for it, any development or changes you plan to make to the land or building, and any activities that will take place there.*

### **Benefits of the proposal**

4.2 Please set out the benefits that you consider will arise if the request is agreed to.



*This section should explain how the project will benefit your community, and others. Please refer to the guidance on how the relevant authority will consider the benefits of a request.*

#### **Restrictions on use of the land**

- 4.3 If there are any restrictions on the use or development of the land, please explain how your project will comply with these.

*Restrictions might include, amongst others, environmental designations such as a Site of Special Scientific Interest (SSI), heritage designations such as listed building status, controls on contaminated land or planning restrictions.*

#### **Negative consequences**

4.4 What negative consequences (if any) may occur if your request is agreed to? How would you propose to minimise these?

*You should consider any potential negative consequences for the local economy, environment, or any group of people, and explain how you could reduce these.*

#### **Capacity to deliver**

4.5 Please show how your organisation will be able to manage the project and achieve your objectives.

*This could include the skills and experience of members of the organisation, any track record of previous projects, whether you intend to use professional advisers, etc.*

**Section 5:      Level and nature of support**

5.1      Please provide details of the level and nature of support for the request, from your community and, if relevant, from others.

*This could include information on the proportion of your community who are involved with the request, how you have engaged with your community beyond the members of your organisation and*

*what their response has been. You should also show how you have engaged with any other communities that may be affected by your proposals.*

## **Section 6:      Funding**

6.1      Please outline how you propose to fund the price or rent you are prepared to pay for the land, and your proposed use of the land.

*You should show your calculations of the costs associated with the transfer of the land or building and your future use of it, including any redevelopment, ongoing maintenance and the costs of your activities. All proposed income and investment should be identified, including volunteering and*

*donations. If you intend to apply for grants or loans you should demonstrate that your proposals are eligible for the relevant scheme, according to the guidance available for applicants.*

## Signature

Two office-bearers (board members, charity trustees or committee members) of the community transfer body must sign the form. They must provide their full names and home addresses for the purposes of prevention and detection of fraud.

This form and supporting documents will be made available online for any interested person to read and comment on. Personal information will be redacted before the form is made available.

**We, the undersigned on behalf of the community transfer body as noted at section 1, make an asset transfer request as specified in this form.**

**We declare that the information provided in this form and any accompanying documents is accurate to the best of our knowledge.**

Name

Address

Date

Position

Signature

Name

Address

Date

Position

Signature

## Checklist of accompanying documents

To check that nothing is missed, please list any documents which you are submitting to accompany this form.

**Section 1 – you must attach your organisation’s constitution, articles of association or registered rules**

Title of document attached:

**Section 2 – any maps, drawings or description of the land requested**

Documents attached:

**Section 3 – note of any terms and conditions that are to apply to the request**

Documents attached:

**Section 4 – about your proposals, their benefits, any restrictions on the land or potential negative consequences, and your organisation’s capacity to deliver.**

Documents attached:

**Section 5 – evidence of community support**

Documents attached:

**Section 6 – funding**

Documents attached:

## Appendix C

### ASSET TRANSFER UNDER THE COMMUNITY EMPOWERMENT ACT

#### MODEL DECISION NOTICE - AGREED



To: Name

Address

[Date of notice]

This Decision Notice relates to the asset transfer request made by **[name of community transfer body]** on **[validation date]** in relation to **[description of land]**.

NHS Dumfries and Galloway has decided to **agree to** the request.

The reasons for this decision are as follows:

The attached document specifies the terms and conditions subject to which we would be prepared to **[transfer ownership] / [lease] / [(describe rights requested)]** of the land to you. If you wish to proceed, you must submit an offer to us at the address above by **[date – at least 6 months from date of notice]**. The offer must reflect the terms and conditions attached, and may include such other reasonable terms and conditions as are necessary or expedient to secure the **[transfer] / [lease] / [other rights]** within a reasonable time.

#### Right to appeal

If you consider that the terms and conditions attached differ to a significant extent from those specified in your request, you may appeal to the Scottish Ministers.

Any application for appeal must be made in writing to **[name and address]** by **[date]**, which is 20 working days from the date of this notice.

Guidance on making an **appeal** is available at [...]



## Appendix D

### ASSET TRANSFER UNDER THE COMMUNITY EMPOWERMENT ACT

#### MODEL DECISION NOTICE - REFUSED



To: Name

Address

#### **[Date of notice]**

This Decision Notice relates to the asset transfer request made by **[name of community transfer body]** on **[validation date]** in relation to **[description of land]**.

NHS Dumfries and Galloway has decided to **refuse** the request.

The reasons for this decision are as follows:

#### Right to appeal

You have a right to appeal to the Scottish Ministers.

Any application for appeal must be made in writing to **[name and address]** by **[date]**, which is 20 working days from the date of this notice.

Guidance on making an application for appeal is available at [...]