

**East Lothian Council
Community Asset Transfer
Policy and Guidance**

This policy and guidance is prepared in the context of the Community Empowerment (Scotland) Act 2015, which enables community transfer bodies to request to:

- buy land or a building owned by the Council
- lease land or a building owned by the Council
- occupy or use the land or building owned by the Council for a particular purpose

A request can be made whether or not the asset is available for sale or deemed surplus to requirements.

1. Policy statement

East Lothian Council holds its property assets as a resource to be used in the delivery of services and to support the delivery of the East Lothian Partnership outcomes. The Council also has a duty to secure Best Value for public money and a decision to transfer an asset must represent good use of public resources.

The Council recognises the role which community ownership of assets can play in regenerating communities and will work with and advise voluntary and community organisations who wish to explore the possibility of asset transfer. The Council will consider the transfer of assets to well-run community organisations which can deliver a wide range of benefits to the local community. These include empowering local communities to address local needs, stimulating opportunities for volunteering and skills development, developing community enterprise and local income streams, thereby contributing to supporting and sustaining local services. A key objective to community ownership of assets is that they contribute to the delivery of local and national strategic outcomes for communities and this will form a critical part of the appraisal of requests for asset transfer, for example whether agreeing to the request would be likely to promote or improve:

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

The Council has in place a process for consideration of requests for asset transfer in accordance with the Scottish Government Guidance for Relevant Authorities, dated January 2017.

2. Guidance

This guidance is for community bodies interested in acquiring or leasing an asset belonging to East Lothian Council and is designed to make the process clear to ensure that organisations provide the information needed for the Council to understand the purpose of the request and how it will bring about benefit for the community in a viable and sustainable way. The guidance provides information on what interested community bodies must do in making an application to lease or purchase land or property from the Council and explains how the Council will assess and determine an application.

2.1 Key Principles in consideration of transfer of assets

- Community asset transfer is driven by the delivery of services and their outcomes and not by the availability of assets. The Council is committed to ensuring that all assets are used effectively to deliver sustainable services whether or not they are owned by the Council or controlled by community bodies.
- The Council will be proactive in assisting community bodies who wish to develop proposals for asset transfer or lease to ensure their reasons for request are likely to improve services for their communities. A group of senior staff from cross Council services will provide information and advice throughout the process.
- The Council will compare the benefits of the proposal in a request to the benefits of any alternative proposals, including those from the Council itself. This may include the continued use of an asset by the Council to deliver a service rather than approve a transfer request. It may also include the disposal of a surplus asset on the open market, if this is assessed to be a better outcome and achieves Best Value.
- The Council will assess asset transfer requests transparently against criteria which will include evidence of the ability of the community body to fund and sustain the asset in the long-term and without ongoing Council commitment.
- The Council will consider whether the cost of transfer would affect the Council's budget to the extent that it reduced its ability to deliver its functions, even after taking account of the proposed benefits.
- It is important that community transfer bodies should not assume that asset transfers will be at a nominal sum and will normally be priced at market value although assets may be transferred at less than market value. This is explained in Section 14 of the Asset Transfer Guidance for Community Bodies ([hyperlink](#)). Where appropriate, the Council and the community transfer body will obtain a joint valuation to obtain a figure on which discussions will be based.

2.2 Eligibility requirements for bodies making a request for transfer of an asset for ownership or lease.

To make an asset transfer request, the Act requires an organisation to be a 'community transfer body', which means it is either a 'community controlled body' or alternatively a body specifically designated by the Scottish Ministers as a community transfer body.

To qualify for **ownership** of an asset as a 'community controlled body' and a 'community transfer body', the group must be:

- a Scottish Charitable Incorporated Organisation (SCIO) or a Community Benefit Society, the registers rules of which include provision that the organisation must have no fewer than 20 members, or
- a company with written constitution or articles of association which has provision that:
 - the company has no fewer than 20 members and has
 - provision for transfer of assets if the community controlled body is wound up, to make sure the asset is passed on to another community or charitable organisation or other approved body as the Scottish Ministers may direct.

For **lease, management and other rights**, the group has to be a Community Controlled Body which has a written constitution which includes the following:

- a definition of the community to which the body relates
- provision that the majority of members of the body consists of members of that community
- provision that the members of the community body have control of the body
- provision that membership of the body is open to any member of that community
- a statement of the body's aims and purposes, including the promotion of a benefit for that community
- provision that any surplus funds or assets of the body are to be applied for the benefit of that community.

Essentially, community transfer and controlled bodies may take many forms with a range of legal structures and are visibly open, inclusive and accountable organisations.

2.3 Initial expression of interest

The Scottish Government has published separate Guidance for Community Transfer Bodies which describes how organisations should apply for transfer or control of assets. (*Asset Transfer Guidance for Community Transfer Bodies.*) The Council encourages groups to discuss their ideas and proposals in the first instance with their local Area Partnership Manager who will provide guidance with the preparation of a request and the completion of an initial Expression of Interest Form. This will

facilitate an exchange of information and discussion and will assist groups to decide whether it is appropriate for them to move on to submit all of the information required for an Asset Transfer Request under the Act. This stage of engagement will also support organisations to ensure that if and when a request for asset transfer is made, it contains the relevant information and can be validated. At this stage, the Council may provide a range of information about the land or buildings, which, if available, could include an indication of the approximate value of the asset of interest to the community transfer body. The Expression of Interest Form is available on the Council's website. ([Asset Transfer - Expression of Interest Form](#))

2.4 Making a request for Asset Transfer

There is a formal process defined by the Community Empowerment (Scotland) Act 2015, which needs to be followed and timescales for responding to requests are also set out in the Act. Groups are strongly recommended to follow the Asset Transfer Guidance for Community Transfer Bodies, prepared by the Scottish Government. An asset transfer request to the Council must be made in writing using the Asset Transfer Request Form on the Council's website. ([hyperlink](#)) The application must include the following information:

- that the request is being made under Part 5 of the Community Empowerment (Scotland) Act 2015
- the name and address of the community transfer body
- confirmation that the application is made by a community controlled body and has community support
- the land or building to which the request relates
- the reasons for making the request
- how the proposal will be funded
- the benefits which the community transfer body considers will arise if the authority were to agree to the request
- if the request is for ownership, the price offered for the land or building, or if the request is for a lease or other, the rent, duration and if relevant, the nature and extent of rights sought.

The Council will not sell the land or building to any other party until the request is dealt with. We will also advise those who own, rent or use the land or building of the asset transfer request and publicise the request on the Council's website. There is a period of 4 weeks after this for public comments on the request to be made to the Council.

2.5 Assessing asset transfer requests

All applications will be assessed by the Council's Capital Investment and Asset Management Group, which is a cross Council group of officers from relevant services. The Council will follow Scottish Government Guidance in assessing requests, taking the following matters, into consideration:

- the reasons for the request

- the value to the authority in the existing use of the asset
 - feasibility and cost of relocation of services elsewhere
 - potential revenue savings arising from the transfer
- the value for alternative use/redevelopment
- whether agreeing to the request would be likely to reduce inequalities of outcome which result from socio-economic disadvantage
- the level of community benefits
 - extent of community served
 - nature of benefits to be delivered as set out in the Policy Statement in section 1 above.
 - links to the Council's corporate priorities and outcomes
 - community need/demand for the services
- the likelihood that benefits will be delivered over a 5-year period
 - strength and sustainability of organisation's governance and financial arrangements
 - sustainability of business plan/project
 - sources and level of funding support
- the impact of project failure
 - to surrounding environment
 - to reputation of the parties
 - to the service users / relevant authority's objectives
- any obligations imposed on the authority by or under any enactment or otherwise, that may prevent, restrict or otherwise affect its ability to agree to the request
- how the request relates to the Council's duties under Equalities legislation
- how Best Value characteristics are evidenced and contained throughout the overall approach.

The strength of a proposal will also be considered against the financial implications of any decision both for short-term budget planning and long-term asset strategies including for future growth. This will include the consideration of the current use of the asset and any consequent implications that could arise from the transfer of the asset.

The information provided should demonstrate that the project has clear objectives, including the projected outcomes and impacts sought by the community transfer body alongside any associated dependencies, constraints and risks identified.

3. How long will the process take?

When a request is received, the Council will check that it contains all the required information and that the organisation making the request qualifies as a community

transfer body. After a request has been validated, the Council will issue a decision to the community body setting out the reasons for its decision within six months from the date that the asset transfer request was validated. There may be reasons why a decision cannot be made within 6 months, for example for a complex request, and a longer period may be required. This will to be agreed between the Council and the community transfer body as quickly as possible and before the 6 month period expires.

4. Decision

The Council will issue a decision notice to the community body making the request setting out the reasons for its decision within the timescales set out above.

If the request is *agreed*, the notice will:-

- specify the terms and conditions on which the Council is prepared to transfer ownership, lease the land or confer other rights requested
- state that the community body must submit an offer to proceed with the process, and
- give the date by which the offer must be submitted (this will be at least 6 months from the date of the decision notice).

If a request is *refused*, the decision notice will set out:-

- the reasons why the Council has refused the request
- explain that an application for review or an appeal can be made
- explain how and to whom an application for review or an appeal to the decision may be made
- that the appeal application must be made within 20 working days from the date of the decision notice

Notification and Publishing

The Council will send the decision notice to the Community Transfer body and publish it online. It will also advise those who made representations of the decision.

5.0 After Agreement

The Community transfer body must submit an offer to take ownership of, or lease of the land or building, based on the terms and conditions set out in the decision notice. The Council will continue to work with and support the community transfer body during this period to agree a final contract for the transfer. However, if no offer is made by the date set in the decision notice (and no appeal has been received from the community transfer body in relation to the terms and conditions within 20 days of the decision notice) the process is at an end and the Council will be free to make a decision about the future of the asset.

6.0 Reviews and Appeals

The Council will follow the procedures set out in Sections 17 and 18 of the Asset Transfer Guidance for Community Transfer Bodies.

6.1 Reviews

A community transfer body can seek a review if:

- the Council refuses the request
- 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 by the Council within the required period

A request for a review must be made in writing to the Council within 20 working days from the date of the decision notice as set in out in Appendix 2. The Council will notify anyone who made representations on the original asset transfer request within 10 working days of receipt of the request for review.

The community transfer body must state the reasons for their request for review and all of the documents related to the review will be published on the Council's website. To assist the review process, the Council may ask interested parties for more information and arrange a hearing session if required.

The review of an asset transfer decision will be carried out by the Council's elected Councillors as required by the Act.

6.2 Appeals

A community transfer body can appeal to the Scottish Ministers if

- they are unhappy with the outcome of the Council's review
- following agreement to an asset transfer request, the Council has not concluded the contract within the agreed time period as set in Appendix 3.

A request for an appeal must be made in writing to the Scottish Ministers within 20 working days from the date of the decision notice as set in out in Appendix 2.

The procedures for appeals to the Scottish Ministers are set out in Section 20 of the Asset Transfer Guidance for Community Transfer Bodies.

Appendices to be incorporated

Appendix 1
Summary of Asset Transfer process - flowchart

Appendix 2
Summary Process following Decision - flowchart

Appendix 3
Appeal where no contract is concluded - flowchart