

# COMMUNITY ASSET TRANSFER GUIDANCE 2025

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## 1. Introduction

East Lothian Council recognises that when communities own or control land and buildings, it can help them reach their goals and improve their area.

The **Community Empowerment (Scotland) Act 2015<sup>i</sup> (The Act)** allows community groups to request land or buildings from local authorities where they think they could make better use of it. These groups can ask for ownership, lease, or other rights.

This guidance focuses on how the council deals with asset transfer requests in compliance with legislation. Its goal is to establish a transparent process.

The guidance provides a summary of some of the main points about Community Asset Transfer from The Act. Community groups that want to apply for an Asset Transfer are encouraged to download the '**Guidance for Community Transfer Bodies**'<sup>ii</sup> prepared by the Scottish Government.

Community groups are also advised to visit the website COSS<sup>iii</sup> (**Community Ownership Support Service**). The Scottish Government funds COSS to help community groups in Scotland take on land and buildings for their community. They offer **independent** advice, examples, and useful resources based on their experience helping organisations through existing voluntary schemes.

## 2. Guidance Position

The Council remains committed to maximising the potential of East Lothian's already strong 'social capital' through supporting the volunteering ethos, strong community and neighbourhood cohesion and

community assets base; community capacity building; and the development of community resilience. The Council will continue to promote Community Asset Transfer opportunities to make best use of surplus community buildings.

This Community Asset Transfer Guidance (CAT Guidance) outlines the legal requirements under the Community Empowerment (Scotland) Act 2015, and the Council's process for Asset Transfer. The guidance provides an overview of how the Council processes Community Asset Transfer requests, ensuring compliance with legal obligations.

Transferring assets to, or management by, Community Controlled Bodies can unlock new funding sources not available to the Council for the use and development of these properties.

The Council's asset portfolio includes buildings, land, structures, and other facilities used for various social, community, and public purposes. For this guidance, an asset is considered to be land, or buildings owned or leased by East Lothian Council for public use. Here is the link to the council's register of assets: [Community Asset Register | East Lothian Council](#)

However, not all assets are suitable for transfer. Some assets must remain under Council ownership and management to support service delivery. Assets that provide income for the Council or have restrictive covenants may be retained. The Council will promote assets that have been in community use (e.g. community centres, libraries, sports pavilions, etc.) for community asset transfer. Other assets which have not been in community use (e.g. depots, offices, etc.) may be prioritised for sale on the open market to assist with the Council's financial challenges.

East Lothian Council, like many local authorities, faces significant financial challenges. When considering requests from community bodies, we seek to balance these against our financial challenges and ensure Best Value<sup>iv</sup> based on Scottish Government Guidance to assess proposals and implement plans based on the social value or best value of a service. If two or more applications are received for the same asset, all CTBs will be informed but not given details of the other request(s). We encourage CTBs to work together to submit a single application.

If an asset has been marketed for sale or lease before a CAT application is received, or the Council has entered into negotiations or begun to transfer or lease the asset to another party, these proceedings may continue, and the asset could be disposed of before the CAT request is concluded.

CAT applications will be objectively evaluated by Council officers using a scoring system, considering the benefits of any alternative proposals and the potential impact on the Council's functions. Decisions on CAT applications will be made in accordance with the Council's scheme of delegation, and the decision notice will be published.

If a CAT request is refused, the CTB can request a review. The appeal decision will follow the Council's scheme of delegation.

This guidance is intended to clarify the process to be followed and the information to be provided where a community body wishes to acquire, lease, or gain rights to assets from East Lothian Council.

This guidance applies to:

- Council officers in the Capital Investment and Asset Management Group (CIAMG), Corporate Asset Management Group (CAG) and any other Council officers who evaluate Asset Transfer requests.

Community Bodies considering submitting Community Asset Transfer requests under the Act.

### **3. Initial Expression of Interest (non-statutory)**

This pre-application stage is **vital** in the asset transfer process. It allows the council to provide advice, support and guide the local community body's interest in asset transfer. It is recommended that the local community body engage with the Council as early as possible when they've identified an asset of interest. This will allow both parties to discuss their needs, ideas, or to get advice on suitable assets. Proposals discussed and developed at this stage are more likely to succeed through collaboration.

At this stage, it is vital that the body has the following information:

#### **1. Community Engagement:**

- **What evidence does the body possess to demonstrate community support for their aspiration?** Groups are urged to initiate communication prior to submitting a Community Asset Transfer request.

#### **2. Business Plan:**

- **What evidence does the body possess to demonstrate the feasibility of their aspiration?**
- All groups are recommended to:
  - Consult with Volunteer Centre East Lothian (VCEL) and Community Ownership Support Service (COSS).
  - Consult with The East Lothian Council business gateway team who can provide guidance on the essential components of a business plan and what constitutes a successful plan.

### 3. Skills Audit:

- **What evidence does the body possess to demonstrate they have the necessary skills and experience to implement their business plan?**
  - Groups are required to conduct a skills audit for their respective entities, with the provision of assistance or guidance from VCEL and COSS advisers. These professionals will be on hand to help pinpoint the varied skills crucial for the success of the project. East Lothian Council will collaborate with Community Transfer Bodies and relevant sporting bodies.

Community Transfer Bodies are advised to use the dedicated CAT Mailbox<sup>v</sup> on our website as this will ensure that all correspondence in relation to a transfer is directed to the appropriate council officers. East Lothian Council and its partners have locally based officers who can provide assistance to community groups with the CAT process. Although it's not mandatory, initiating communication before submission is encouraged.

Community Transfer Bodies will be given the opportunity to provide any missing information considered key to the decision-making process.

The following sections of this document provide a summary of to the key principles and requirements of the community asset transfer process for East Lothian Council It is important to begin discussions early, both within the community and with key council contacts. The non statutory Pre-Application Stage details the steps community bodies should take when applying to lease or purchase land or property from the Council and explains how the Council assesses and determines an application. A

Community Asset Transfer request is officially made only when the Community Asset Transfer application form is submitted.

### **3.1 Key Principles in consideration of transfer of assets**

- **Community-Driven Service Delivery:**
  - Community Asset Transfer focuses on delivering services and their outcomes, not just on the availability of assets. The Council is committed to ensuring effective use of all assets to ***deliver sustainable services***, whether owned by the Council or controlled by community bodies.
- **Assistance:**
  - The Council encourages community bodies to engage with the local advisers from VCEL/COSS to obtain independent advice and support in developing proposals for asset transfer or lease, to ensure their reasons for the request would likely improve services for their communities. Senior staff across Council services provide information and advice throughout the process.
- **Comparison of Benefits:**
  - The Council compares the benefits of a CAT proposal with any alternative proposals, including those from the Council itself. This may involve continued use of an asset by the Council to deliver a service or the disposal of a ***surplus asset on the open market if it achieves Best Value***.
- **Transparent Assessment:**
  - Asset transfer requests are assessed transparently against criteria, including evidence of the community body's ability to fund and ***sustain the asset long-term without*** ongoing Council commitment.

- **Budget Impact Consideration:**
  - The Council considers whether the cost of transfer would impact its budget to the extent that it reduces its ability to deliver functions, even after considering the proposed benefits.
- **Fair Pricing:**
  - Community Transfer Bodies should not assume that asset transfers will be at a nominal sum. Normally, assets are priced at market value. Chapter 11 of the Asset Transfer Guidance for Community Bodies<sup>vi</sup> explains this further. The Council and the Community Transfer Body may obtain a joint valuation to base discussions on.

### **3.2 Eligibility requirements for bodies making a request for transfer of an asset**

To request the transfer of an asset under the Community Empowerment (Scotland) Act 2015, the applying organisation must meet the definition of a 'Community Transfer Body'. It can be either a 'Community-Controlled Body' or a body specifically designated as a Community Transfer Body by the Scottish Ministers.

A Community-Controlled Body which wishes to make an asset transfer request to acquire **ownership** of a property must also meet additional requirements (See para 3.2.2 below)

#### **3.2.1 Requirements for a Community-Controlled Body**

A Community-Controlled Body does not have to be incorporated, but it must have a written constitution.

To qualify as a community-controlled body, the body 's constitution, Articles of Association or registered rules must include the following:

- a) a definition of the community to which the body relates - the group may represent the community in a particular area or people who have a common interest or characteristic; the definition should be clear enough to show whether a person is a member of the community or not;*
- b) provision that the majority of the members of the body is to consist of members of that community - membership must be open to anyone who is a member of the defined community and there must not be any additional requirements;*
- c) provision that the members of the body who consist of members of the community have control of the body;*
- d) provision that membership of the body is open to any member of that community;*
- e) a statement of the body's aims and purposes, including the promotion of a benefit for that community; and*
- f) provision that any surplus funds or assets of the body are to be applied for the benefit of that community.*

(Further information on the requirements for Community-Controlled Bodies can be found in para 5.10 of the [Guidance for Community Transfer Bodies](#) provided by the Scottish Government.)

### **3.2.2 Requirements for a Community-Controlled Body making asset transfer request for ownership.**

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 Act.

If the Community Transfer Body is a company, the Articles of Association must include arrangements for what happens to the body's assets if it is wound up. This must require that the property is transferred:

- i. to another Community Transfer Body,*
- ii. to a charity,*
- iii. to such community body (within the meaning of section 34 of the Land Reform (Scotland) Act 2003) as may be approved by the Scottish Ministers,*
- iv. to such crofting community body (within the meaning of section 71 of that Act) as may be so approved, or*
- v. if no such community body or crofting community body is so approved, to the Scottish Ministers or to such charity as the Scottish Ministers may direct. If the organisation is a SCIO or BenCom, there will be similar provisions to ensure that the remaining property is transferred to another body with similar structure and aims.*

Community Interest Companies and other bodies should seek independent legal advice (in particular in relation to their constitution) if considering a Community Asset Transfer.

### **3.3 Making a request for Asset Transfer**

The Community Asset Transfer (CAT) process is a formal procedure under the Community Empowerment (Scotland) Act 2015. This Act allows community organisations to request the transfer of ownership and/or control of public land and buildings from East Lothian Council to themselves.

When a community organisation wishes to make a CAT request to East Lothian Council, they must follow a prescribed process with specific

timelines for response. This ensures that the process is transparent, fair, and accountable.

***We strongly recommend that the first step in this process is for the community organisation to express their interest in a particular asset to the Council.*** East Lothian Council will then acknowledge this expression of interest.

Following this, the community organisation may consider submitting a formal asset transfer request. This request should include details about the community organisation, the asset they are interested in, the reasons for the request, and their plans for the asset.

**A formal asset transfer request must be made in writing and must:<sup>vii</sup>**

- 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 [asset] to which the request relates;**
- F. Specify whether the request falls within paragraph (a), (b)(i) or (b)(ii) of section 79(2), i.e., 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.**

To ensure a comprehensive understanding of this process, community organisations are strongly advised to adhere to the [Asset Transfer Guidance for Community Transfer Bodies](#) provided by the Scottish Government. This guidance provides detailed information about the CAT

process, including how to make a request, what information to include in the request, and what to expect after a request is submitted.

### **3.4 Assessing Asset Transfer Requests**

The Council has put in place a consistent and transparent corporate process for assessing the benefits, costs and risks of the transfer of responsibility associated with asset transfer. That evaluation process considers how the proposed asset transfer request contributes to the established themes of Best Value set out in [Community Empowerment \(Scotland\) Act 2015 - asset transfers: social value guidance](#). Each one of those themes will be explored with the evidence provided and used to evaluate the strength of the case being made, including the sustainability of the proposal in the longer-term.

On receipt of an Asset Transfer Request, a lead officer will be identified. A working group including other key services may be convened in order to assist in the assessment and reporting of the request. Information will be collated and taken through asset management governance.

In reviewing each request, the following matters, though not exhaustive, will be considered:

1. Value to council in existing use
  - a. feasibility and cost of relocation of services elsewhere
  - b. potential revenue savings arising from transfer.
2. Value for alternative use/redevelopment.
3. Value for proposed and other community purposes.
4. Level of community benefits and the extent of community served.
5. Nature of benefits to be delivered.
  - a. links to council's corporate priorities and outcomes.
  - b. community need/demand for the services.
6. Likelihood that benefits will be delivered over a 5-year period.

- a. strength of organisation.
  - b. sustainability of business plan/project.
  - c. sources and level of funding support.
7. Impact of project failure.
- a. to surrounding local environment.
  - b. to reputation of the parties.
  - c. to the service users/Council `s objectives.

The strength of the proposals will then be considered against the financial implications of any decision both for short-term budget planning and long-term asset strategies. 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 Community Transfer Body must submit their financial offering, which should detail an appropriate level of community benefits and demonstrate a robust and effective business case including a Best Value Case.

### **3.5 Prohibition on disposal of land<sup>viii</sup>**

Once an asset transfer request application has been submitted, the Council is not allowed to sell, lease, or otherwise dispose of the land it relates to, to anyone other than the Community Transfer Body that made the request, until the whole process is completed. This is set out in the Act. The prohibition does not apply if the land has already been advertised for sale or lease, or the relevant authority has entered into negotiations or begun proceedings to transfer or lease the land to another body.

### **3.6 Multiple Community Asset Transfer Requests<sup>ix</sup>**

3.6.1 When received, asset transfer requests must be processed in line with the procedures and timescales set out in the legislation, even if further requests are received for the same land before the first request

has been concluded. There is no scope for delaying a decision on one request until any previous requests have been considered.

3.6.2 The Scottish Government Guidance suggests that, **if the pre-application process is used**, it may be possible to agree with the Community Transfer Bodies involved that requests from different bodies<sup>x</sup> be submitted at roughly the same time in order to allow them to be processed in parallel. However, agreement may not be possible.

3.6.3 Each asset transfer request that is received prohibits the Council from disposing of the land to anyone other than the Community Transfer Body making that request, until the process has been completed. As such, where multiple requests are made by different bodies for the same land, it could result in overlapping prohibitions.

3.6.4 If, however, the first request has proceeded to the extent that a decision notice has been issued, a prohibition in relation to a subsequent notice would be disallowed and would not prohibit the disposal in respect of the first request.

3.6.5 If a decision notice has not been issued in relation to the first request, prohibitions emanating from subsequent requests will take effect, resulting in overlapping prohibitions. However, that will not prevent the **processing** of either the first or the subsequent request(s).

3.6.6 Where there are overlapping prohibitions, ultimate **disposal** of the land cannot take place until all requests have been concluded, including any appeals.

3.6.7 In this situation, the Council can then apply to the Scottish Ministers for a direction to disapply a prohibition if necessary.

#### 4. How long will the process take?

The Community Empowerment Act outlines several crucial stages in the process, and we aim to adhere to the prescribed timescales for each stage. These stages are as follows:

##### 1. **Validation and Decision Notice:**

- **Checking and Making a Decision:** East Lothian Council has a period of 6 months from the date of a **Validation Notice** to assess and issue a decision notice. This period can be extended through negotiation if necessary.

##### 2. **Review or Appeal:**

- **Asking for a Review:** If a Community Transfer Body disagrees with any part of the decision notice, they have 20 days to lodge a request for a **review or an appeal**.

##### 3. **Submission of Offer:**

- **Making an Offer:** Following the issue of an acceptable **Decision Notice**, the community group has a minimum of 6 months to submit an offer. This period can also be extended through negotiation if required.

##### 4. **Contract Conclusion:**

- **Finishing the Contract:** The contract is typically concluded within 6 months from the date of the community offer.

#### 5. Decision

When the Council receives a Community Asset Transfer (CAT) request, we will check if the request is eligible and if the organisation making the request qualifies as a Community Transfer Body. If the request is validated, as outlined in Appendix 5 - Validation Process for Community Asset Transfer, the Council aims to make a decision within six months from the validation date. For more complex CAT requests that require additional time, the Council may consider extending this period through

mutual agreement, ensuring transparency and effective communication throughout the process.

Once a decision is made, the Council will issue a decision notice. If the request is approved, the notice will include the terms and conditions for the transfer and will specify a minimum 6-month period for the community body to submit an offer. If the request is denied, the notice will explain why and will provide information on how to file a review or appeal within 20 working days.

Under Section 93 of the Act, the Council has the right to not consider a request that is the same or very similar to a previous request that was refused within the last two years. This applies even if the new request is made by a different body. Importantly, such a decline is not considered a refusal and therefore, it cannot be appealed or reviewed.

## **6. Notification and Publishing**

East Lothian Council will take the following steps to ensure transparency and participation in the asset transfer process:

1. **Notification of Request<sup>xi</sup>**: As soon as possible after receiving a completed request (the validation date), we will inform everyone involved. This includes any tenant, occupier, or owner (if the Council is leasing the land) of the land the request is about, and any group that regularly uses the land or building.
2. **Public Display of Request**: We will publish the asset transfer request online and display it in a public place near the land in question, as required by Regulation 7(2)(b)<sup>xii</sup>.
3. **Content of Notices**: All notices, whether sent directly or published, must include:
  - A statement that an asset transfer request has been made.

- Identification of the Community Transfer Body making the request and the land the request is about.
  - A brief description of the rights requested and the proposed use of the land by the Community Transfer Body.
  - Instructions on how to inspect the asset transfer request and related documents.
  - Information on how and by when comments about the request can be made (at least 20 working days after the notice is given or published).
4. **Handling of Representations:** The notice also advises that all comments will be copied to the Community Transfer Body for their response and published. If any comments are received, the Community Transfer Body will be sent copies and given at least 20 working days from the date the copy is sent to respond. Any personal information will be removed before they are copied to the Community Transfer Body or published online.
5. **Decision Notice:** The Council will send the decision notice to the Community Transfer Body, make it publicly available online, and notify anyone who made comments during the process.

## **7. After Decision Notice Published**

After the Decision Notice is published, the Community Transfer Body must submit an offer that matches the terms specified in the Decision Notice.

During this period, the Council can provide non-financial support to the community group in finalising a contract.

If no offer is submitted or no appeal is lodged within the respective deadlines, the process comes to an end. At this point, the Council retains the discretion to decide the future of the asset. This could involve considering alternative proposals for the asset or maintaining the status

quo. This ensures that the asset is managed in the best interest of the community.

## **8. Reviews and Appeals**

Community Transfer Bodies have the right to request a review and/or appeal to the Scottish Government regarding any decision made under this guidance. Information on how to do this is available for download from our website and detailed in the CAT Process Guidance. (See also paragraph 8 below).

This Guidance Statement will be updated to reflect any changes made to the Community Empowerment (Scotland) Act 2015, related regulations or guidance within 20 working days of the enactment or publication of such changes and will be reviewed for relevance every two years.

### **The appeals/review process for Community Asset Transfers in Scotland is as follows:**

#### **8.1 Reviews by the Council**

The Community Transfer Body can request an internal review by the Council where:

- the body's request is refused; or
- the body's request is agreed but the terms and conditions in the decision notice are significantly different from those in the request.
- the Council does not give a decision notice to the body within 6 months of the validation notice, as stated in the request's acknowledgement (or within such longer period as may have been agreed).

To request a review, the body must make an application for review within 20 days of the date of the decision notice or, (where a decision notice has

not been issued), within 20 days of the date by which the decision notice should have been issued.

The Community Transfer Body is required to specify the reasons for the review request. All pertinent documents will be made publicly accessible on the Council's website. To expedite the review process, the Council may request additional information from relevant parties and, if necessary, arrange a hearing session.

The Council will conduct the review of an asset transfer decision in accordance with the Act, ensuring a fair and unbiased assessment. This process ensures that all parties involved have a fair opportunity to present their case and that the final decision is made in the best interest of the community.

## **8.2 Appeals to the Scottish Ministers**

The Community Transfer Body can appeal to the Scottish Ministers, where there has been an internal review by the Council, and:

- the review's outcome does not resolve the issue; or
- no decision is made in respect of the internal review within 6 months of the date on which the application for review was made.

In order to request an appeal, the body must make an application to appeal the review decision within 20 days of the date of the decision notice was issued following the review or, (where a decision notice has not been issued in relation to the review), within 20 days of the date by which the decision notice should have been issued.

A Community Transfer Body can appeal directly (without a prior internal review by the Council) to the Scottish Ministers if an asset transfer request is approved, but no contract is concluded within 6 months of the

date of the offer made by the body (or such longer period as may have been agreed between the body and the Council or directed by the Scottish Ministers). To do so, the body must serve a notice of appeal within 10 working days of the date by which the contract should have been concluded.

The Scottish Government Guidance provides detailed information about each process and how reviews and appeals will be conducted.

In all scenarios, the final decision rests with the Scottish Ministers. There is no further appeal route beyond them, except for judicial review.

## Footnotes

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- <sup>i</sup> [The Community Empowerment \(Scotland\) Act 2015](#), “Act”; the Act; - Unless otherwise specified, this refers to the Community Empowerment (Scotland) Act 2015 and in particular, Part 5 of said Act.
- <sup>ii</sup> [Guidance for Community Transfer Bodies](#) - Guidance under the Community Empowerment (Scotland) Act 2015. This website offers comprehensive guidance on asset transfer.
- <sup>iii</sup> [The Community Ownership Support Service \(COSS\)](#) - Funded by the Scottish Government, COSS assists community groups in Scotland in acquiring land and buildings for their community. They provide advice, case studies, and resources based on their experience supporting organisations through existing voluntary schemes.
- <sup>iv</sup> [2015 - asset transfers: social value guidance](#) - Best value is the requirement to make arrangements to secure continuous improvement in performance whilst maintaining an appropriate balance between effectiveness and economy.
- <sup>v</sup> [Mailbox](#) - East Lothian Council email link to our dedicated Community Asset Transfer (CAT) team.
- <sup>vi</sup> [Section 11 of the Asset Transfer Guidance](#) - for Community Bodies explains Price, Valuation and Non-financial benefits.
- <sup>vii</sup> [How to make an Asset Transfer Request - Community Empowerment \(Scotland\) Act 2015: community transfer bodies' guidance - gov.scot \(www.gov.scot\)](#) how to make the asset transfer request
- <sup>viii</sup> [Prohibition on disposal of land](#). - Procedure following receipt of an asset transfer request
- <sup>viii</sup> [The Asset Transfer Request \(Procedure\) \(Scotland\) Regulations 2016 \(legislation.gov.uk\)](#) – The form and content of an asset transfer requests
- <sup>ix</sup> [Paragraph 8.6 – Multiple Requests](#) - Guidance from Paragraph 8.6 under the Community Empowerment (Scotland) Act 2015: Handling Multiple Requests for the Same Asset.
- <sup>x</sup> [Community Transfer Body in section 77 of the “Act”](#), - explains about the different bodies of Community Transfer Bodies
- <sup>xi</sup> [Regulation 7\(2\)\(b\) – publication of asset transfer request](#) - Legislation -The Asset Transfer Request (Procedure) (Scotland) Regulations 2016 – The publication of asset transfer request
- <sup>xii</sup> [Regulation 7\(2\)\(b\) – publication of asset transfer request](#) - Legislation -The Asset Transfer Request (Procedure) (Scotland) Regulations 2016 – The publication of asset transfer request