

## **Section A: Introduction**

### **1. Foundations: Our offer is underpinned by two key facts, as follows:**

- The land in question [subject ground] has always has been in use as agricultural/horticultural/recreational land. The growing of crops has been central to Belhaven Garden during its 15 years of existence and remains so.
- The land of which the subject ground is part, was transferred into public ownership by Feu Charter in May 1905, the grant being to “*the County Council of Haddington and the Provost, Magistrates and Councillors of the Burgh of Dunbar*” --- “*for the purposes of a Hospital for the treatment of infectious and contagious diseases*” and further providing that “**any ground not used for these purposes shall be only used for agricultural purposes or as pleasure grounds in connection with said Hospital and the said buildings and grounds shall be put to no other purpose without the consent of the Superiors**”. The subject ground occupied by Belhaven Community Garden falls squarely within that provision.

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### **2. Executive Summary: We wish to set out, as clearly as possible, how and why we have arrived at the offer price.** It is recognised that the **Basis of Value** to be applied to the subject ground is a critical factor in this CAT Request [CATR] as is the obligation on public bodies to achieve **Best Value**. Each of these is complex in itself and the influence of one upon the other is material. For that reason, not least, it has not proven possible, during the preceding negotiations to agree a basis of value / value. **What follows can be summarised thus:**

- **Section B addresses Basis of value**

**B1: Exceptions to market value:** *This provision could / should apply.*

**B2: Market value:** *The correct basis for valuation is as agricultural land.*

**B3: Development potential:** *There are major obstacles to any development proposal and these justify dismissing this as a basis of value.*

**B4: Basis of Value: Conclusion**

- **Section C addresses Best Value obligations:** *We highlight what we believe to be specific obligations incumbent upon NHS Lothian in assessing this CATR, particularly when addressing “Best Value”.*
- **Section D addresses Best Value and Discount:** *Primarily, this submission does not depend upon discount but we here touch upon the 7 Best Value themes which are of general importance in assessing the whole CATR.*

**Section B.1 Basis of value: Exceptions to Market Value**

The CAT Guidelines recognise that in some situations it may not be appropriate to use market value but to use a different basis of value. [CTBG 12.18 P53 and RAG 12.18 P52]. One anticipated exception is where the land sought is “*subject to a restriction on use which prevents it from being used for any other purpose.*” Without prejudice to our central argument that the correct basis of value of the subject ground is “*agricultural land*” we believe that the condition imposed in the original Feu Charter through which the land came into public ownership does in any event, justify treating this as an exceptional case, within the CATR process. The subject ground was given into public ownership for the express purpose of benefitting the local community; not least in terms of the health and wellbeing of local residents and with an express prohibition upon use of the land in question for any other use. This intention and purpose should be honoured, especially by NHS Lothian which is charged with responsibility for the health and wellbeing of the population.

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**B.2 Basis of Value: Market Value**

The CAT guidelines [CTBG 12.17 p53 and RAG 12.17 page 52] refer to Basis of Value. The assumption is that “*in most cases this will be market value as defined in the Red Book*” and including “*any rights or burdens that run with the land*”. **We believe that the starting point for marketing must be agricultural value.** [See the two key “foundational facts” set out above.] There is a spectrum of value within agricultural value and the advice we have received from a commissioned RICS report **[see Appendix 3B]** is that the top end of that spectrum would be £45,000, which is our offer price. It should be noted that we have not applied any discount to this figure.

**B.3.1 Development Potential:** In taking the above position we do not ignore the fact that that “*development potential*” is also included in the CATR guidelines as a relevant consideration in determining value. The negotiating / facilitating team which has represented NHS Lothian in the pre-Request discussions has emphasised their belief that the basis of value must rest upon development potential. This, however, gives rise to the critical question **“What is a reasonable assessment of that development potential?”** Our primary position, is that development potential can only be founded upon a reasonable belief that planning permission could be obtained for development. We believe that the grounds for such a reasonable belief are extremely limited and we have set out, below, the details of our argument in support of that position.

**B.3.2 Planning Consents past and present:** The Title condition as referred to above [foundational principles] specifically restricts the use of the land. To “agricultural / recreational”. Until proven otherwise, this poses a significant impediment, both legally and morally, to any development potential. The only extant planning permission in place for the subject ground is for use as a community garden and that use is well established. Whereas outline planning permission for development did exist in the past, it is now some 23 years since this was granted and it has long expired. Circumstances have changed materially since that grant and it is our conviction that the odds are now stacked heavily against a future grant of permission to develop the subject ground.

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**B.3.3 East Lothian Local Development Plan and designation of the subject ground:** It has been argued that development potential is enhanced by the inclusion of the subject ground in the extant [2018] but soon to be superseded East Lothian Local Development Plan and in the 2023 Housing Land Audit as a “*constrained site for housing*”. The part of the whole site which contains the former hospital buildings [not part of the subject ground], is zoned as a Health Care Site. However, none of the above constitutes planning permission and so has limited relevance. Circumstances have also changed, materially, since the original LDP designation and that designation cannot [by law] simply be carried forward to the next LDP, due to come into effect this calendar year [2026]. There are very good reasons to suppose that the subject ground will not be so designated in the 2026 LDP, a number of which are set out below. **To understand the impact of NPF4 and attendant guidelines upon Local Development planning it is critically important to study these.**

- <https://www.gov.scot/publications/national-planning-framework-4/>
- <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2025/12/scottish-government-planning-guidance-biodiversity/documents/scottish-government-planning-guidance-biodiversity/scottish-government-planning-guidance-biodiversity/govscot%3Adocument/scottish-government-planning-guidance-biodiversity.pdf>

**B.3.3.a LDP 2026 and Local support for Belhaven Community Garden:** The 2025 Local Place Plan for Dunbar and West Barns [See Appendices 14 and 15] was developed after local consultation by Dunbar Community Council and has been submitted to ELC as part of the statutory consultation process which precedes the drafting of a Local Development Plan. The LPP accurately reflects the expressed majority view in Dunbar that the subject ground should be

retained as a community garden. The history of the use for local benefit before and during the 15 years [to date] of Belhaven Community Garden and the value of that to the local community was undoubtedly influential in the Local Place Plan recommendation and it is reasonable to expect that the same factors, combined with the LPP recommendation will also carry significant weight when the final terms of the LDP are agreed; resulting in the subject ground not being designated as suitable or required for housing development. The history of very significant housing development across East Lothian and locally within Dunbar / West Barns since LDP 2018 will also strongly militate against any argument that the subject ground is needed to fulfil Scottish Government housing quotas.

**B.3.3.b LDP 2026 and NPF4 Policy 3 :** Policy 3 requires any developer to show how development would conserve, restore and enhance biodiversity net-gain and not cause any adverse health impacts. The existing high and increasing level of biodiversity in the garden and the obvious adverse health impacts that would result from its loss impose a high bar, one that we believe no developer could reach. Planning Guidelines produced on 17<sup>th</sup> December 2025 provide that in order for biodiversity to be enhanced it will need to be demonstrated that, following development, *it will be in an overall better state than before intervention and that this will be sustained*. Also, as noted in the Ryden valuation, another constraint on housing development would arise from noise and vibration from the East Coast Mainline.

**B.3.3.c LDP Policy OS1, Protection of Open Space:** The extant planning permission for the subject ground is for a community garden and **LDP Policy OS1, Protection of Open Space**, states that: *“Recreational, leisure and amenity open space and facilities, including outdoor sports facilities, will be safeguarded to meet the recreational needs of the community or protect the amenity or landscape setting of an area. Alternative uses will only be considered where there is no significant loss of amenity or impact on the landscape setting and: [i] the loss of a part of the land would not affect its recreational, amenity or landscape function, or [ii] alternative provision of equal community benefit and accessibility would be made available, or [iii]. provision is clearly in excess of existing and predicted requirements.”* It is extremely difficult to see how planning permission for development could be given without contravening this policy.

**B.3.3.d LDP Policy NH5: Biodiversity and Geodiversity Interests**, states, *inter alia*, that: *“New development that would result in: [b] an adverse impact to the biodiversity value of the development site or the surrounding area ...will only be permitted where the loss is clearly outweighed by the public benefit of the development and suitable mitigation has been proposed and will be secured.”* Given the established biodiversity value of the existing garden and the major

housing developments recent and ongoing, in the immediate area it is very difficult to see how developing the subject ground could be permitted without contravening this policy.

**B.3.3.e LDP Policy NH8: Trees and Development** states: “*There is a strong presumption in favour of protecting East Lothian’s woodland resources. Development affecting trees, groups of trees, or areas of woodland will only be permitted where: [a] Any tree, group of trees or woodland that makes a significant positive contribution to the setting, amenity of the area has been incorporated into the development through design and layout, and wherever possible such trees and hedges should be incorporated into public open space and not into private gardens or areas ...*” Given that the community garden is currently a much valued open space with high biodiversity value and includes a large orchard [containing well over 100 mature fruit trees, many of Scottish heritage varieties] as well as many other trees, any assumption that it is likely to be possible to obtain planning consent for housing on the subject ground is highly questionable.

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**B.3.4 Other planning considerations: The Nature Conservation (Scotland) Act (2004)** requires all public bodies in Scotland to further the conservation of biodiversity when carrying out their responsibilities. At the full Council meeting of 31 October 2023, East Lothian Council unanimously voted to support a motion to declare a nature emergency. The motion proposed by Council Leader, Norman Hampshire, recognises that biodiversity is in decline and the impact that climate change is having on wildlife and nature. To destroy the existing community garden in favour of development would fly in the face of this obligation and commitment, which fact militates against the likelihood of any grant of planning permission to develop the site.

**B.3.5 Other planning considerations: The obligations upon [and stated commitment of] East Lothian Council, as planning authority, in terms of Section 119 of the Community Empowerment [S] Act 2015 in respect of the provision of community growing spaces:** Section 119 of the Community Empowerment (Scotland) Act 2015 details a specific requirement for Local Authorities to note how they intend to increase the provision of food growing sites, especially in areas that are experiencing socio-economic disadvantage, and to protect and support existing sites. The absence of any such plan by ELC and the fact that destruction of Belhaven Community Garden would reduce existing community growing provision militates against the likelihood of any grant of planning permission to develop the garden site.

**B.3.6 Other planning considerations: The responsibility upon East Lothian Council, under Part 9 of the 2015 Act, to provide allotment spaces for local residents.** There is, currently, an extremely limited ELC allotment provision in Dunbar and no new allotments have been added for at least 40 years. The destruction of existing, individual use, growing plots within Belhaven

Community Garden would reduce local provision and this militates against the likelihood of a grant of planning permission to develop the garden site.

**B.3.7 Other planning considerations: Likely objections to any planning application for development of the subject ground:** The proven local support for the retention of the land as a community garden makes likely that there would be significant levels of objections to any proposal to develop the subject ground. Other significant objections can also be expected due to the amount of recent and ongoing development in the immediate area, the unsuitability of the immediate road infrastructure and the overall impact upon residents and visitors. There are very real challenges regarding access to the site and the inevitable increase in local traffic, especially given the narrowness of the roads adjacent to the site. The report commissioned by Kenneth Ryden Partners for NHS Lothian was, notably, completed without a site visit. It suggests that the former Hospital entrance on Beveridge Row would be suitable for access to the whole site but fails to take account either of the narrowness of Beveridge Row; the extremely difficult junction with the busy Belhaven Road or the challenges posed in the other direction; challenges exacerbated by the use of that road as a pedestrian route, without a pavement where it passes under the main east coast railway line. That underpass is single track and functions with traffic lights. Increasing traffic, if diverted away from Beveridge Row, would also have a major impact upon the existing new development [Cala] which was not designed for such volumes of through traffic.

**B.4 Basis of Value: Conclusion:** All of the above, leads us to the strong belief that effecting a CAT of the subject ground at current use/agricultural land value can be justified as a “*best value*” disposal given: [1] the very real impediments to any possible housing development and [2] our conviction that our proposal will allow many decades of future public health and other benefits that will far outweigh any possible short-term benefits from a one-off capital receipt. It is also likely that being adjacent to a thriving community garden would enhance the development value of the remaining land at Belhaven Hospital. It seems logical to us that Belhaven Community Garden should take on the role of ‘Health Care Site’ whilst the remainder of the former hospital land be rezoned for future housing, especially if this housing can be truly affordable and meet real, local community needs.

**Section C      Best Value: NHS Lothian obligations****C.1: What is best value?**

The Healthcare Financial Management Association (HFMA) is the professional body for finance staff working in healthcare. According to their definitions: *“Value in health care is about achieving better health outcomes for patients, service users and the wider population, improving the experience of patients and staff, and ensuring the most efficient use of resources. It involves delivering high-quality care that is safe, effective, timely, efficient, equitable, and patient-centred, with a focus on prevention, innovation, and continuous improvement.”*

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<https://www.hfma.org.uk/healthcare-value-institute/what-is-value-based-healthcare>

The National Health Service is, as the name declares, there to promote health and wellbeing and it is well-established that prevention is better than a cure. As the NHS comes under increasing pressures of demand, the ever spiralling cost of meeting that demand increases the need to encourage and enable people, individually and collectively, to manage their own health and wellbeing. This is critical to future financial viability of the institution [best value] and also affords a best value outcome for citizens themselves. The value of prevention / self-management of health is, ultimately, impossible to quantify but, undoubtedly, goes to the whole person, beyond any one particular health issue. The truth of the above is widely recognised within the NHS and Government, hence the multiple policies published across the spectrum. **Policies, however, do not achieve anything, in themselves.** It is only when they are acted upon that there can be any hope of achieving the desired policy outcomes. It is also true to say, that the value of one successful project implementing a policy, goes well beyond that of the project itself. It serves as an exemplar of what can be achieved, inspiring and encouraging others to follow suit.

**C.2      Best Value and Community Asset Transfer Regulations:** The Guidance for Relevant Authorities [13.16 and 13.17] requires that *“Any asset transfer request should be assessed alongside any other proposals for the related asset to enable a Best Value judgement to be made.”* Implicit in this is that the same assessment criteria should be applied to the alternative proposal[s] as are required anent a CATR. So far as we are aware, the only other current proposal is sale for development; the returns from that to be applied to the general NHS Lothian budget. Whatever value might eventually be used by NHS Lothian in assessing this CATR, we believe that any refusal of this CAT Request founded wholly or partly upon value must rigorously demonstrate

that the alternative proposal[s] offer “Best Value” when compared to this CATR and that this constitutes “*reasonable grounds for refusal*”.

**C.3 Best Value and the support of NHS Lothian in Belhaven Community Garden.**

In assessing the value of this CATR, we suggest that it is also incumbent upon NHS Lothian as a health care provider and public body, and taking account of all relevant policy outcomes, many of which are cited in this CATR, to consider how the value of this CATR could and would be significantly enhanced were NHS Lothian, in line with its own published Green Health Programme Strategy 2023 – 2028 to stand behind the Belhaven Community Garden project and assist its development as an exemplar of the vision set out in said programme and the other public policy outcomes referred to. This CATR provides NHS Lothian with a unique opportunity to do that, building upon the original vision and imagination which allowed Belhaven Community Garden to be started so many years ago.

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**C.3 Best Value and Local Impact:** A great deal of what is said in this CATR relates to local impact. Despite operating “against the odds” during and post covid, as well as suffering the knock on effects on the garden of the shutdown of mains water supply and the subsequent closure of Belhaven Hospital, the garden continues to fulfil its core functions and the potential for the future, if we can gain the security of ownership for the community, remains limitless. This is especially the case given the established track record of the garden project [innovative and focussed upon prevention] and the “spin-off” projects to which it has already given birth. The corollary is that the loss of the garden would have major adverse impact on the health and wellbeing of the local population.

**C.4 Best value and the wider impact:** In assessing “best value” as part of the decision making process, we also contend that NHS Lothian has a responsibility to give full and proper weight to the likely effects of the closure of Belhaven Community Garden beyond those in the Dunbar area. Innovative and successful as the Belhaven Community Garden is, its destruction, following upon a sale to a developer, would have an adverse impact well beyond Dunbar itself. It is quite likely to result in other potential projects never seeing the light of day; the cost of which will never be fully known and would include significant reputational damage to NHS Lothian.

**Section D Best Value and Discount**

The Relevant Authority Guidelines [Section 13 pp 54ff] recognise that a CATR may offer less than market value. Our offer represents what we consider to be the market value and we have applied no discounts to this. This does not mean that we do not consider discounts justified. What follows

summarises our case that discounts are appropriate and justified and could provide a basis for further discussion on price. For the avoidance of doubt, however, our offer is not dependent upon that.

**D.1 The 7 Best Value themes** are important in considering the whole application and therefore in seeking to agree a price for the land. We believe that BCG already has a track record of providing benefit in at least 5 of the 7 areas: [1] Public Health, [2] Social Wellbeing, [3] Environmental Wellbeing, [4] Reducing inequalities of outcome from socio economic disadvantage, [5] Other benefits. We refer to the main body of the CAT Request in which we provide a robust case for the benefits of the existing and proposed provisions at Belhaven Community Garden. We believe that these align with the above “best value themes”.

**D.2 The Relevant Authority Guidelines, section 13.4** provide that “*Asset Transfer at less than market value is justified when these additional benefits empower communities and align with local and national priorities to enable the delivery of Best Value across the public sector as a whole.*” Sustaining Dunbar believes that BCG fulfils this requirement and that the benefits delivered and deliverable align with Scottish Government National Outcomes as well as more local policy priorities and policy objectives. It is also our belief that the current and proposed use of the land as a Community Garden meets the aims and objectives of NHS Lothian itself, as set out in the Green Health Programme Strategy 2023 – 2028. This strategy proceeds on Principles and Assumptions, which are stated to be “*the change mechanisms at the core of our programme and things that we rely on being in place to contribute to the outcomes we seek.*

We believe that to dispose of the site currently occupied by the BCG, for development, would fly in the face of these stated Principles and Assumptions. Approving this CATR would, on the other hand, show a determination to stand by these Principles and Assumptions and a real commitment to “*establishing a sustainable, person-centred activity pathway to use nature to improve patient health and wellbeing.*”

The main body of our CAT Request sets out a detailed case, including a section on monetary quantification of the benefits, existing and anticipated, and the ways in which these tie into Local and National outcomes.

***Sustaining Dunbar CAT Steering Group***

***January 2026***