

PERTH AND KINROSS COUNCIL

Strategic Policy and Resources Committee – 19 September 2012

COMMUNITY EMPOWERMENT AND RENEWAL BILL CONSULTATION

Report by John Fyffe, Depute Chief Executive

ABSTRACT

The report outlines the current Scottish Government consultation on the forthcoming Community Empowerment and Renewal Bill and presents a draft response from the Council for approval.

1 RECOMMENDATION

It is recommended that the Committee:

- 1.1 Approve the draft response to the Scottish Government Community Empowerment and Renewal Bill consultation (Appendix 1).

2 BACKGROUND

- 2.1 As part of the Scottish Government's vision for strengthening Scotland's communities, it has proposed to bring forward a Community Empowerment and Renewal Bill. Through this Bill the Scottish Government aims to strengthen community participation, unlock enterprising community development and renew communities.
- 2.2 This includes seeking views on areas such as increasing communities engagement in community planning and decision making, strengthening the role of Community Councils in managing resources and services, making it easier for communities to take over unused and underused public sector assets and introducing measures to help communities deal more effectively with vacant and unused property in their areas.
- 2.3 The proposals in the Bill aim to address the Christie Commission's recommendation that the participation of communities in the planning and delivery of services is strengthened.
- 2.4 The initial ideas in this Bill have been developed by the Scottish Government following consultation with people from across all sectors and from a number of different communities throughout Scotland. The Scottish Government also sought views from local authorities and the wider public sector and considered inspiring and innovative examples of work already being undertaken to support community empowerment.

- 2.5 The consultation was launched early in June 2012. The closing date of consultation was originally set for the end of August 2012; however this has now been extended to 28 September 2012.

3 DEVELOPMENT OF A PERTH AND KINROSS RESPONSE

- 3.1 The areas covered in the consultation on the Bill are wide ranging, therefore a number of services have been involved in compiling the draft response (Appendix 1).

4 CONSULTATION

- 4.1 The Corporate Management Group, Executive Officer Team and the Administration Group of the Council have been consultation in the development of this report.

5 RESOURCE IMPLICATIONS

- 5.1 There are no resource implications arising from this report.

6 CORPORATE PLAN OBJECTIVES

- 6.1 The Council's Corporate Plan 2009-2012 lays out five Objectives which provide clear strategic direction, inform decisions at a corporate and service level and shape resources allocation. This report specifically supports delivery of the following Corporate Objective:-

(v) Confident, Active and Inclusive Communities

7 EQUALITIES IMPACT ASSESSMENT (EqIA)

- 7.1 An equality impact assessment needs to be carried out for functions, policies, procedures or strategies in relation to race, gender and disability and other relevant protected characteristics. This supports the Council's legal requirement to comply with the duty to assess and consult on relevant new and existing policies.

- 7.2 The function, policy, procedure or strategy presented in this report was considered under the Corporate Equalities Impact Assessment process (Eq1A) with the following outcome:

i) Assessed as not relevant for the purposes of Eq1A.

8 STRATEGIC ENVIRONMENTAL ASSESSMENT

- 8.1 Strategic Environmental Assessment (SEA) is a legal requirement under the Environmental Assessment (Scotland) Act 2005 that applies to all qualifying plans, programmes and strategies, including policies (PPS).

- 8.2 The matters presented in this report were considered under the Environmental Assessment (Scotland) Act 2005 and no further action is required as it does not qualify as a PPS as defined by the Act and is therefore exempt.

9 CONCLUSION

- 9.1 The proposal to introduce a Community Empowerment and Renewal Bill has significant implications for Councils across Scotland. Therefore agreement of the attached comprehensive response to the consultation for submission to the Scottish Government is a key priority of the Council.

JOHN FYFFE
Depute Chief Executive

Note: No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above report.

Contact Officer: Fiona Mackay/Jackie Halawi
Education & Children's Services

Address of Service: Pullar House, 35 Kinnoull Street, Perth PH1 5GD

Date: 3 September 2012

Appendix 1: Consultation response

If you or someone you know would like a copy of this document in another language or format, (on occasion only, a summary of the document will be provided in translation), this can be arranged by contacting *The Communications Manager*
E-mail: ecsgeneralenquiries@pkc.gov.uk



Council Text Phone Number 01738 442573

Community Empowerment and Renewal Bill



RESPONDENT INFORMATION FORM

Please Note both pages of this form **must** be returned with your response to ensure that we handle your response appropriately.

1. Name/Organisation

Organisation Name

Perth & Kinross Council

Title Ms ☒ Mrs ☐ Miss ☐ Mr ☐ Dr ☐ Please tick as appropriate

Surname

Mackay

Forename

Fiona

2. Postal Address

Pullar House

35 Kinnoull Street

PERTH

Postcode PH1 3BH

Phone 01738 475057

Email

fmackay@pkc.gov.uk

3. Please indicate which category best describes your organisation (Tick one only).

Executive Agencies and NDPBs	<input type="checkbox"/>
Local authority	<input checked="" type="checkbox"/>
NHS	<input type="checkbox"/>
Other statutory organisation	<input type="checkbox"/>
Representative body for private sector organisations	<input type="checkbox"/>
Representative body for third sector/equality organisations	<input type="checkbox"/>
Representative body for community organisations	<input type="checkbox"/>
Representative body for professionals	<input type="checkbox"/>
Private sector organisation	<input type="checkbox"/>
Third sector/equality organisation	<input type="checkbox"/>
Community group	<input type="checkbox"/>
Academic	<input type="checkbox"/>
Individual	<input type="checkbox"/>
Other – please state...	<input type="checkbox"/>

4. Permissions - I am responding as...

Individual <input type="checkbox"/> / Group/Organisation <input checked="" type="checkbox"/>	
<i>Please tick as appropriate</i>	
<p>(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?</p> <p><i>Please tick as appropriate</i> <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis</p> <p><i>Please tick ONE of the following boxes</i></p> <p>Yes, make my response, name and address all available <input type="checkbox"/></p> <p>or</p> <p>Yes, make my response available, but not my name and address <input type="checkbox"/></p> <p>or</p> <p>Yes, make my response and name available, but not my address <input type="checkbox"/></p>	<p>(c) The name and address of your organisation will be made available to the public (in the Scottish Government library and/or on the Scottish Government web site).</p> <p>Are you content for your response to be made available?</p> <p><i>Please tick as appropriate</i> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?</p> <p><i>Please tick as appropriate</i> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	

Please ensure you return this form along with your response.

Thank-you.

Community Empowerment and Renewal Bill

CONSULTATION QUESTIONS



PART 1: STRENGTHENING COMMUNITY PARTICIPATION

Community Planning

Q1. What would you consider to be effective community engagement in the Community Planning process? What would provide evidence of effective community engagement?

Effective community engagement within the community planning process should involve using a variety of approaches to gather the views of a wide range of community members. There should be a structured approach to ensure that this information is communicated to the Community Planning Partnership (CPP) to provide an understanding of the needs and strengths of its communities. The importance of several methods of engagement is recognised as the needs and strengths of individuals and groups may be diverse even within defined communities. There should subsequently be evidence of how this understanding has influenced joint action to address local community need. Evidence could include community profiles, delivery of outcomes related to identify priorities, local issues presented in plans, skills development by community members, improved local intelligence and partnership working, etc.

Q2. How effective and influential is the community engagement currently taking place within Community Planning?

Although there is significant evidence of community engagement by all Community Planning partners, community engagement approaches could be further developed to better inform community planning. For instance information gathering from community engagement could be better targeted to ensure that the information sought and analysed is more clearly aligned with local priorities and therefore more effectively influences strategic planning. To be more effective community engagement needs to be more coordinated, both across agencies and in relation to strategic priorities. At a local level community planning through local partnerships supported by the Council is effective and measured, and is growing, there is also evidence of how community engagement is influencing service developments within partner organisations.

Q3. Are there any changes that could be made to the current Community Planning process to help make community engagement easier and more effective?

An agreed purpose to community engagement and a common language needs to be developed. Requirement to have a local community engagement plan would reinforce the requirement for community planning mechanisms to include systematic, coordinated/agreed approaches that support development and delivery of agreed outcomes would also continue to enhance the role of community engagement.

An overarching duty to engage

Q4. Do you feel the existing duties on the public sector to engage with communities are appropriate?

Community engagement by the public sector could be strengthened through the development of more consistent expectations on all public sector organisations. This would oblige all CPP organisations to engage equally and would support the development of a single co-co-ordinated CPP approach or plan.

Q5. Should the various existing duties on the public sector to engage communities be replaced with an overarching duty?

Yes ☐ No ☐

Please give reasons for your response below.

Possibly. An overarching duty to engage may be beneficial although not essential, as many CPPs have already taken ownership of the responsibility to establish and drive agreed approaches to community engagement. A more joined up approach, such as refining existing duties to require community engagement to be in support of or through Community Planning mechanisms, would give more strategic support to community involvement.

If you said 'yes' to Question 5, please answer parts a. and b. –

a. What factors should be considered when designing an overarching duty?

- Role of community engagement in planning, delivering and measuring impact and outcomes
- Clarity of purpose
- Roles of all service and partners
- Obligation to coordinate with partners and streamline activity

b. How would such a duty work with existing structures for engagement?

- Strengthen local working/arrangements
-

Community Councils

Q6. What role, if any, can community councils play in helping to ensure communities are involved in the design and delivery of public services?

Although the primary statutory role of Community Councils is to ascertain and express the views of the local community to the local authority and to other public bodies there is little evidence that this is currently undertaken robustly by many Community Councils.

There is concern about any further strengthening of the role of Community Councils as, in many instances, these groups are not representative of the community and are often constituted without elections as not enough community members are willing to become involved. This is likely to reflect the availability of time for many individuals, and often results in Community Councillors being representative of a limited range of demographic groups.

As a result of limited interest in some communities, Community Councils do not

exist in all areas; for instance two out of the three Perth City wards do not have a Community Council. This variability across the Council area would lead to challenges in ensuring equity if Community Councils were involved in the design and delivery of public services.

It is recognised that other community organisations, such as Development Trusts, sports clubs and youth groups, often undertake a much more proactive role in their community. A structure for ascertaining the views of the local community through engagement of a wider range of groups, such as those referred to above, is thought to be more appropriate.

The current structure of Community Councils was established in 1975 at a time when communities and communication were significantly different. Community Council structures need to evolve to reflect the changes in how communities organise and communicate; however simply adding to their role in the ways suggested in this question and the following two questions is not helpful to local community development.

There are examples of good practice in the role undertaken by Community Councils, for example the approach taken by Dunning Community Council which played an active role in the Council's 'Place Check' activity in their area. This involved the Community Council directly engaging with the wider community through door-to-door visits and the organisation of events to gather community views to feed into the 'Place Check'. However this positive collaborative approach is not common practice in all Community Council areas and equally effective examples of well lead community engagement by other community groups are also evident.

Q7. What role, if any, can community councils play in delivering public services?

Community Councils will find it difficult to have the capacity to deliver services or to identify sufficient resources to be able to have a role in the direct delivery of public services. In addition it is likely they would find it challenging to have appropriate arrangements in place to ensure equality, best value and good governance.

Q8. What changes, if any, to existing community council legislation can be made to help enable community councils maximise their positive role in communities

It is unclear whether Community Councils would feel that legislative changes would make any difference, indeed some local Community Councils have stated that they would not wish to extend their capacity. Consideration needs to be given to new approaches to community engagement and capacity building as Community Councils are not seen by many residents as central to the development of many communities. Other alternative models, such as Development Trusts, could be considered.

It is also possible that Community Councils themselves would say that they need additional dedicated monies / resources to enable them to undertake their existing role let alone any enhanced role.

Third Sector

Q9. How can the third sector work with Community Planning partners and communities to ensure the participation of communities in the Community Planning process?

Within Perth and Kinross the third sector is already actively working with local partnerships and the CPP to agree joint outcomes primarily through the involvement of the 'third sector interface' in the CPP, thematic partnerships and local community partnerships. This can provide a key conduit to information and intelligence sharing and the development and maintenance of local networks. Within Perth and Kinross Voluntary Action Perthshire (VAP) are resourced to lead on key community engagement elements of delivery of the CPP Change Fund work for older people. Flexibility to develop community participation through other/additional arrangements with the wider group of national and local voluntary organisations should also be maintained as they may engage with different sections of the community.

National Standards

Q10. Should there be a duty on the public sector to follow the National Standards for Community Engagement?

Yes ☒ No ☐

Please give reasons for your response

This will lead to a consistent approach that will lead to be more understandable for communities.

Community engagement plans

Q11. Should there be a duty on the public sector to publish and communicate a community engagement plan?

Yes ☒ No ☐

Please give reasons for your response

Although community engagement needs to be flexible and responsive to local issues it is felt that it would be helpful to have a community engagement plan that explicitly lays out the commitment of the CPP to engaging with the community. This framework for community engagement should provide clarity regarding the overarching approach of the CPP to engaging with its community.

If you said 'yes' to Question 11, please answer part a. –

a. What information would be included in a community engagement plan?

The Plan should include identification of the key community groups that the CPP would engage with and that would lead engagement activity with the wider community.
It would also set out the key engagement approaches to be used, ie. citizen's panels, surveys, focus groups; and the key topics the engagement for the following year.
In addition it would identify how the information gained from community engagement would be used within the decision making processes of the CPP.

Auditing

Q12. Should community participation be made a more significant part of the audit of best value and Community Planning?

Within Perth and Kinross Council's self-evaluation model (how good is our

council?) consideration is already given to the engagement of and participation by communities and service users. However there is a need to continue to develop measures/evidence of this to ensure that there is a strong focus on evidence of quality and not only on numbers.

Named Officer

Q13. Should public sector authority have a named accountable officer, responsible for community participation and acting as a primary point of contact for communities?

Yes ☐ No ☒

Please give reasons for your response

Community engagement is a key responsibility of all services within all public sector organisations; introducing a named accountable officer may imply that the responsibility on all services within the organisation to contribute to delivery of community engagement is reduced.

However in the event that it is felt necessary to introduce a named accountable officer approach it is suggested that Chief Executives of all public sector organisations should be responsible for ensuring community participation is facilitated through the Council's strategy and policies. A strategic lead for community engagement within the Council would be more effective as all services have a role to play.

Tenants' right to manage

Q14. Can the Scottish Government do more to promote the use of the existing tenant management rights in sections 55 and 56 of the Housing (Scotland) 2001 Act?

Yes ☒ No ☐

Please give reasons for your response

Individual tenants and groups are unaware, or possibly will have forgotten, about the tenant management rights provisions in the 2001 Act. There was very limited reference to this right in the leaflet which was published by the Scottish Government in 2002. More needs to be done to promote these rights.

Q15. Should the current provisions be amended to make it easier for tenants and community groups to manage housing services in their area?

Yes ☒ No ☐

Please give reasons for your response

Local authorities know that tenants have the greatest understanding of issues and how they could be tackled, but providing staffing resources to deal with approaches/ requests could be problematic. Greater resources would need to focus in building tenant capacity and sustainability in these areas. Access to this kind of support needs to be made available equitably in all areas.

Community service delivery

Q16. Can current processes be improved to give community groups better access to public service delivery contracts?

Yes ☒ No ☐

Please give reasons for your response

Procurement processes are already well on their improvement journey to ensure community groups will be able to participate more easily than in the past. To continue to develop this, organisational capacity building needs to run in parallel

with community capacity building. Some key elements that have so far supported improvement are outlined below.

Q17. Should communities have the right to challenge service provision where they feel the service is not being run efficiently and that it does not meet their needs?

Yes ☐ No ☒

Please give reasons for your response

This question has been answered in respect of Councils only, where it is felt that there are already several examples of good practice in respect of accountability to the public for standards and the delivery best value in relation to service delivery. Council services are already accountable to communities through the democratic process of Council/local elected members. Councils also have a statutory duty to deliver best value and there is a robust audit system in place to ensure compliance with this. In addition, Councils have a statutory responsibility to report to the public annually on the performance of services and the delivery of outcomes.

Community directed spending – participatory budgeting

Q18. Should communities have a greater role in deciding how budgets are spent in their areas?

Yes ☒ No ☐

Please give reasons for your response

Communities should have an opportunity to engage and be able to request to be heard but should not have a role in managing spend. It is recognised that there are economies of scale in relation to the delivery of some services and it may not be possible to efficiently meet the desires of all communities. Therefore there will be limitations on how small a community this engagement should be with. It should be noted that there are currently arrangements in place within Councils which provide members of the public with the opportunity to bring a delegation to Committee meetings should they feel they have views that they would like heard.

Q19. Should communities be able to request the right to manage certain areas of spending within their local area?

Yes ☐ No ☒

Please give reasons for your response

Public sector organisations still need to manage spend to ensure standards across the whole area; quality still needs to be adhered to. The sustainability of services needs considered in any arrangement for local management. Therefore engagement would need to be within the context of a long term vision and key priorities for the whole area would need established.

If you said 'yes' to Question 19, please answer parts a., b. and c. –

a. What areas of spending should a community be responsible for?

- b. Who, or what body, within a community should be responsible for making decisions on how the budget is spent?

- c. How can we ensure that decisions on how the budget is spent are made in a fair way and consider the views of everyone within the community?

Definitions for Part 1

Q20. Please use this space to give us your thoughts on any definitions that may be used for the ideas in Part 1. Please also give us examples of any definitions that you feel have worked well in practice

PART 2: UNLOCKING ENTERPRISING COMMUNITY DEVELOPMENT

Community right to buy

Q21. Would you support a community right to buy for urban communities?

Yes ☒ No ☐

Please give reasons for your response

This is integral to community development as it gives communities assets to build upon.

If you said 'yes' to Question 21, please answer parts a., b. and c.:

- a. Should an urban community right to buy work in the same way as the existing community right to buy (as set out in Part II of the Land Reform (Scotland) Act 2003)?

The right to buy should be on a similar basis to the existing right to buy for communities of less than 10,000 population in terms of the Land Reform(S) act 2003:

- properly-constituted body
- sustainable business plan
- evidence of significant community support
- pre-emptive only (i.e. can only be exercised when property is put on the

- market)
- default position that purchase price is DV/independent valuation.

b. How should an 'urban community' be defined?

It is recognised that there could be numerous "communities" within an urban area. It is suggested that these 'communities' could be linked to the definition in the 2003 Act (defined by postcode area).

Community body could be defined as a group:

- made up of a specific number of people
- with a common purpose
- based in the locality
- comprising a majority of residents (i.e. not a commercial entity)

(See 2003 Act Guidance).

c. How would an urban and rural community right to buy work alongside each other?

Urban and rural right to buy should work alongside each other – right to buy under the 2003 Act relates to land/buildings within rural areas and therefore the proposed Bill currently being consulted on should exclude these. There could be issues if the Bill allows urban community bodies to compel a sale as the 2003 Act does not allow this.

Community asset transfer

Q22. The public sector owns assets on behalf of the people of Scotland. Under what circumstances would you consider it appropriate to transfer unused or underused public sector assets to individual communities?

It would be appropriate in situations where assets have been declared surplus to requirements and where communities can demonstrate social and economic benefits.

Please also answer parts a. to d. below:

a. What information should a community body be required to provide during the asset transfer process?

Evidence that properly-constituted (see 2003 Act)

- appropriate level of community support
- business plan demonstrating viable and sustainable community project

b. What information should a public sector authority be required to provide during the asset transfer process?

- valuation of property
- access for inspection
- title deeds
- condition survey (possibly)
- energy performance certificate
- environmental report (possibly)

- planning information
- realistic timelines and expectations

c. What, if any, conditions should be placed on a public sector authority when an asset is transferred from the public sector to a community?

An obligation should be imposed to undertake due diligence to ensure asset is being transferred to a properly constituted community body for social and economic purposes that benefit the community.

d. What, if any, conditions should be placed on a community group when an asset is transferred from a public sector body to a community?

Community group should be properly constituted as a not for profit organisation, representative of a defined community and use the asset for demonstrable social and economic benefit of the community. It may be prudent to consider economic development burden/claw back provisions in event of sale at enhanced value.

Q23. Should communities have a power to request the public sector transfer certain unused or underused assets?

Yes ☒ No ☐

Please give reasons for your response

Subject to provisions that the public sector determines whether the asset is unused or underused and the community organisation is properly constituted and representative of a defined community. There are concerns that the power to request is not introduced as a power to demand or insist on transfer. There is a need to meet the tests outlined at Q21.

Q24. Should communities have a right to buy an asset if they have managed or leased it for a certain period of time?

Yes ☒ No ☐

Please give reasons for your response

Subject to provisions that ensure that they are constituted and have a business case that demonstrates full use of the asset for social and economic benefit of the community. This would depend on circumstances. Local authorities should still retain the ability to manage their assets.

If you said 'yes' to Question 24, please answer part a:

a. What, if any, conditions should be met before a community is allowed to buy an asset in these circumstances?

As above – properly constituted:

- community support
- business case demonstrating viable and sustainable community project
- continued community use
- no arrears of rent breaches of lease/management agreement
- LA can impose economic development burden or claw back provision.

Common good

Q25. Do the current rules surrounding common good assets act as a barrier to their effective use by either local authorities or communities?

Yes ☒ No ☐

Please give reasons for your response

Need to have regard to interests of inhabitants of former burghs (sec.15 Local Government etc (S) Act 1994) is an anachronism and creates inequality across current administrative area. Need to refer to sheriff on alienation of certain types of common good property (sec.75 1973 Act) causes delay.

Q26. Should common good assets continue to be looked after by local authorities?

Yes ☒ No ☐

Please give reasons for your response

Contrary to popular misconception, common good assets are owned by local authorities, not by the inhabitants of the relevant former burghs. As owners of these assets, it is right that local authorities should manage and look after them. As noted elsewhere in this response it would be helpful if common good assets – like all other council assets - could be managed by local authorities for the benefit of the inhabitants of the entire administrative area.

If you said 'yes' to Question 26, please answer parts a. and b.:

a. What should a local authority's duties towards common good assets be and should these assets continue to be accounted for separately from the rest of the local authority's estate?

Local Authorities have an overarching statutory duty to achieve best value. This requires them to consider the interests of all their communities and the continued existence of common good distorts that.

Common good is an outmoded concept that creates conflict for local members whose duties are to the wider community as well as to their former-burgh wards. It creates inequality, both among the former burghs, which have vastly differing common good resources and across the wider administrative area.

There are misunderstandings about the meaning of "have regard to" in the 1994 Act, with local members placing a disproportionate weight on the interests of the inhabitants of the former burghs.

Local authorities should consult with the inhabitants of the former burghs regarding "iconic" common good property like town halls and public parks but should otherwise be free to use common good assets across the administrative area in the same way as other council assets.

b. Should communities have a right to decide, or be consulted upon, how common good assets are used or how the income from common good assets is spent?

No if the principle is accepted that Local Authorities are free to use common good assets across the administrative area in the same way as other council assets.

If you said 'no' to Question 25, please answer part c.:

c. Who should be responsible for common good assets and how should they be managed?

Asset management

Q27. Should all public sector authorities be required to make their asset registers available to the public?

Yes ☒ No ☐

Please give reasons for your response

Information is currently made available and this should continue on the basis of openness and transparency.

If you said 'yes' to Question 27, please answer part a.:

a. What information should the asset register contain?

Overview of asset condition, value, location, historic spend and future budget provision.

Q28. Should all public sector authorities be required to make their asset management plans available to the public?

Yes ☐ No ☐

Please give reasons for your response

Duplicate of question 27.

Q29. Should each public sector authority have an officer to co-ordinate engagement and strategy on community asset transfer and management?

Yes ☐ No ☒

Please give reasons for your response

Q30. Would you recommend any other way of enabling a community to access information on public sector assets?

Promotion through digital media.

Allotments

Q31. What, if any, changes should be made to existing legislation on allotments?

The legislation needs to be amended to provide communities with more power to identify and take forward appropriate sites for allotments. In addition it needs to support easier transfer of land, for example through the Housing Revenue Account. At present the process is very laborious

involving letters to Ministers, etc. There is currently a duty on Local Authorities to provide allotments at a time when resources are over stretched and reducing. The onus should be on the community to develop their own allotments but with the assistance and support of the Local Authority who should have powers to help including allocation of land.

Q32. Are there any other measures that could be included in legislation to support communities taking forward grow-your-own projects?

Planning legislation could include a presumption for the transfer of unused land to allotments; currently some land owners are reluctant to release land in and around settlements where they may have future development potential. Also some allocation of land during the local development plan process would be helpful should community groups wish to come forward. If local authorities are wishing to dispose of land to reduce their asset liabilities, there should be a process to make that simple – for example a block planning application or permitted development rights to change the land to allotments or to community groups for grow your own. Individual site applications are costly and time consuming

Definitions for Part 2

Q33. Please use this space to give us your thoughts on any definitions that may be used for the ideas in Part 2. Please also give us examples of any definitions that you feel have worked well in practice

PART 3: RENEWING OUR COMMUNITIES

Leases and temporary uses

Q34. Should communities have a right to use or manage unused and underused public sector assets?

Yes ☒ No ☐

Please give reasons for your response

Yes subject to provisions that the public sector determines whether the asset is used or unused and the community organisation is properly constituted and has a business case that demonstrates full use of the asset for social and economic benefit of the community.

If you said yes to Question 34, please answer parts a., b. and c.:

a. In what circumstances should a community be able to use or manage unused or underused public sector assets?

Where the Local Authority determines that the asset is to be unused or underused for a period and wishes to offer it to the community for that period and where the

community does not wish full ownership of capital asset.

b. What, if any, conditions should be placed on a community's right to use or manage public sector assets?

Community group should be properly constituted as a not for profit organisation, representative of a defined community and have a viable and sustainable business plan for use the asset for demonstrable social and economic benefit of the community.

c. What types of asset should be included?

Assets for which the Local Authority has no immediate service need but does not wish to dispose of at that time as determined by potential longer term service needs or economic development benefits.

Encouraging temporary use agreements

Q35. Should a temporary community use of land be made a class of permitted development?

Yes ☒ No ☐

Please give reasons for your response

There would need to be definition of temporary use and consistency with current planning frameworks for management of temporary uses.

Q36. Should measures be introduced to ensure temporary community uses are not taken into account in decisions on future planning proposals?

Yes ☒ No ☐

Please give reasons for your response

Temporary uses should still be acceptable in land use planning terms on their own merits but should not prejudice alternative permanent land use planning proposals. The extent of the period of temporary occupation needs to be considered in relation to the potential for this to in effect permit the use to become established.

Q37. Are there any other changes that could be made to make it easier for landlords and communities to enter into meanwhile or temporary use agreements?

Active promotion of underused assets and the means of establishing agreement on temporary use.

Dangerous and defective buildings

Q38. What changes should be made to local authorities' powers to recover costs for work they have carried out in relation to dangerous and defective buildings under the Building (Scotland) Act 2003?

The Act should contain powers to issue a charging order on a property where an owner or owners fail to pay for work undertaken by the local authority in default. Currently the lack of such power is considered as a disincentive to become involved with disrepair/ danger where the owner cannot be relied on to cooperate. It would be extremely useful if Data Protection rules could be relaxed to permit all information on ownership held by a local authority can be shared within that

authority provided it is for the purposes of enforcing legislation. NB Cost can currently be recovered under debts of inhibition and through use of alternative Planning legislation.

Q39. Should a process be put in place to allow communities to request a local authority exercise their existing powers in relation to dangerous and defective buildings under the Building (Scotland) Act 2003?

Yes ☒ No ☐

Please give reasons for your response

At present any person or group can report dangerous/ defective buildings to the local authority. Communities are no different in being able to make such requests. Ultimately the local authority must retain the power to determine as and when they decide to undertake work in default. It should be encouraged that community groups themselves should seek to work with property owners within their own area to ensure that property which may or may not be unoccupied but is in disrepair does not become a blight.

Compulsory purchase

Q40. Should communities have a right to request a local authority use a compulsory purchase order on their behalf?

Yes ☒ No ☐

Please give reasons for your response

Providing that the local authority has sole discretion as to whether CPO can be justified, the community can indemnify the local authority for all costs and either the local authority or the community has an end use for the subjects. The circumstances for exercising a CPO are limited and generally a last resort.

If you said 'yes' to Question 40, please answer part a.:

a. What issues (in addition to the existing legal requirements) would have to be considered when developing such a right?

Community indemnifies LA for all costs

- LA has sole discretion as to whether CPO can be justified
- either LA or community has end use for subjects
- all requirements referred to previously as regards proper constitution of body, support, business case etc.

Q41. Should communities have a right to request they take over property that has been compulsory purchased by the local authority?

Yes ☒ No ☐

Please give reasons for your response

As things stand there is nothing stopping anyone requesting a public authority sell or lease any of their property. There are concerns that the right to request may be legislated as a right to demand or insist that the transfer takes place. This would have a detrimental effect on the ability of local authorities to manage their own property.

If you said 'yes' to question 41, please answer part a.:

a. What conditions, if any, should apply to such a transfer?

Community group should be properly constituted as a not for profit organisation, representative of a defined community. Resolution would be required on whether community body would have to indemnify local Authority of costs, the end use and/or design was consistent with the CPO.

Power to enforce sale or lease of empty property

Q42. Should local authorities be given additional powers to sell or lease long-term empty homes where it is in the public interest to do so?

Yes ☐ No ☒

Please give reasons for your response

Use of powers of compulsory purchase would be more appropriate to secure use for agreed purpose.

If you said 'yes' to Question 42, please answer parts a., b. and c.:

a. In what circumstances should a local authority be able to enforce a sale and what minimum criteria would need to be met?

b. In what circumstances should a local authority be able to apply for the right to lease an empty home?

c. Should a local authority be required to apply to the courts for an order to sell or lease a home?

Yes ☐ No ☐

Please give reasons for your response

Q43. Should local authorities be given powers to sell or lease long-term empty and unused non-domestic property where it is in the public interest to do so?

Yes ☐ No ☒

Please give reasons for your response

Use of powers of compulsory purchase would be more appropriate to secure use for agreed purpose.

If you said 'yes' to Question 43, please answer parts a., b. and c.:

- a. In what circumstances should a local authority be able to enforce the sale of a long-term empty and unused non-domestic property and what minimum criteria would need to be met?

- b. In what circumstances could a local authority be able to apply for the right to lease and manage a long-term empty non-domestic property?

- c. Should a local authority be required to apply to the courts for an order to sell or lease a long-term empty non-domestic property?

Yes ☐ No ☐

Please give reasons for your response

- Q44.** If a local authority enforces a sale of an empty property, should the local community have a 'first right' to buy or lease the property?

Yes ☐ No ☐

Please give reasons for your response

Same criteria as above Q21 'right to buy'.

If you said 'yes' to Question 44, please answer part a.:

- a. In what circumstances should a community have the right to buy or lease the property before others?

Definitions for Part 3

- Q45.** Please use this space to give us your thoughts on any definitions that may be used for the ideas in Part 3. Please also give us examples of any definitions that you feel have worked well in practice

Temporary would need to be defined. Long term would need to be defined.

ASSESSING IMPACT

Q46. Please tell us about any potential impacts, either positive or negative, you feel any of the ideas in this consultation may have on particular group or groups of people?

Positively promotes empowerment of representative community groups but may have a negative impact if not adequately resourced in relation to enhancing community capacity to acquire and manage assets. Consideration also requires to be given to the potential detrimental effect on the remainder of the community of being deprived of an asset. In addition with regard to common good, the continued special treatment of common good property is potentially unfair on the inhabitants of communities that were not burghs. There may be potential human rights issues for public authorities if they are given the right to take over empty or unused property in private ownership.

Q47. Please also tell us what potential there may be within these ideas to advance equality of opportunity between different groups and to foster good relations between different groups?

This provides an opportunity to address anachronism of common good property and create a fairer situation for all communities. Community engagement should not be linked to common good or to former burgh boundaries but should be consistent across administrative area. Through dialogue, openness and the willingness to work in inclusive partnerships (recognising equality needs), communities should be able to either manage assets themselves or influence services within their areas.

Q48. Please tell us about any potential impacts, either positive or negative, you feel any of the ideas in this consultation may have on the environment?

This may lead to better use of assets if community bodies have sustainable plans for assets. May shift unused property into use and contribute to carbon reduction through re-use of existing assets on a temporary or permanent basis. Potential negative impacts could occur, such as properties falling into disrepair, if communities are not adequately resourced to re-use and maintain assets and the asset deteriorates.

Q49. Please tell us about any potential economic or regulatory impacts, either positive or negative, you feel any of the proposals in this consultation may have?

There is potential for positive growth of social enterprises to provide direct social economic benefits to communities. They are however likely to increase requirements to use Local Authority resources (staff, time) in supporting community bodies in the short term to help achieve this. This could impact on the ability of Local Authorities to make decisions about their assets for the benefit of the wider community/whole area.

The Bill needs to take account of the context of current duties of Local Authorities in terms of State Aid rules, Disposal regulations, Best Value and the duty to achieve best reasonable consideration when disposing of property and replace these if they are inconsistent with revised priorities to empower communities. This will provide a more robust set of rules that will reduce the risk that Local Authorities may be challenged on such decisions especially when times are hard for many wholly commercial businesses.

The value of the Bill could strengthen partnerships, dialogue, support to the communities and understanding of the time required for community empowerment to take place.

Thank-you for responding to this consultation.

Please ensure you return the respondent information form along with your response.