

## PERTH AND KINROSS COUNCIL

Environment Committee – 30 January 2013

## LAND REFORM REVIEW GROUP CALL FOR EVIDENCE

## Report by the Depute Director (Environment)

This report outlines the current Land Reform Review Group's Call for Evidence and presents a response from the Council for approval.

**1. RECOMMENDATIONS**

The Committee is asked to approve:

- i) The response to the Land Reform Review Group's Call for Evidence (Appendix 2).

**2. BACKGROUND**

- 2.1 The Scottish Government have appointed an independent group, The Land Reform Review Group (LRRG), to look at land ownership and land use across Scotland with the aim of developing recommendations on changes that will be beneficial to Scotland in relation to the Land Reform (Scotland) Act 2003 (LRA). The emphasis of the Review is on Part 2 The Community Right to Buy and Part 3 The Crofting Community Right to Buy of the LRA. Part 1 Access Rights has a bearing on these issues and the draft response also provides information arising from the Council's experience of Part 1. The remit given to the LRRG is shown in Appendix 1
- 2.2 Local authorities have both duties and powers in relation to public access rights under Part 1 of the Land Reform Act. Although the Council has no direct involvement with Parts 2 and 3, the wide remit of the LRRG means their work is expected to have implications for communities within cities and towns as well as within the countryside.
- 2.3 The LRRG are inviting contributions from those with an involvement or interest in land ownership, access, farming, crofting, forestry, the natural heritage, social and affordable housing, planning, economic and community development.
- 2.4 The LRRG has asked contributors to consider how the following objectives can be accomplished while preparing responses:
  - Enable more people in rural and urban Scotland to have a stake in the ownership, governance, management and use of land, which will lead to a greater diversity of land ownership, and ownership types, in Scotland;

- Assist with the acquisition and management of land (and also land assets) by communities, to make stronger, more resilient and independent communities which have an even greater stake in their development;
- Generate, support, promote and deliver new relationships between land, people, economy and environment in Scotland.

2.5 While responding to the above points they request that contributors:

1. Outline their vision of *how* things could be different and explain *why*, in the contributor's opinion, they *should* be different;
2. Indicate any barriers there may be in the way of attaining this vision;
3. Suggest how these barriers could be removed and progress facilitated – whether by voluntary, legislative, fiscal or other means.

2.6 This call for evidence and the response has similar themes to the 'Community Empowerment and Renewal Bill Consultation' which the Council responded to in September 2012 (Committee Report 12/399 refers). The Call for Evidence suggests that where relevant, cross reference with this submission may be appropriate, in addition a copy of the previous response could usefully be attached. The Council's response to the Community Empowerment and Renewal Bill consultation is included as Appendix 3.

2.7 The draft response is therefore laid out in a manner which reflects the above request.

2.8 The LRRG has requested that responses are submitted 11 January 2013. An extension has been agreed to allow the Council to submit its response in early February 2013. The LRRG expects to make a first report to the Government, outlining proposals that can be implemented relatively promptly, in May 2013.

### **3. PROPOSALS**

3.1 It is proposed that the Council formally submits the response in Appendix 2 to the LRRG's Call for Evidence and attaches the Council's submission to the Community Empowerment and Renewal Bill Consultation for information.

### **4. CONSULTATION**

4.1 The Head of Finance, Head of Legal Services, Head of Planning and Regeneration and the Head of Democratic Services and have been consulted in the preparation of this report.

### **5. RESOURCE IMPLICATIONS**

5.1 There are no resource implications arising from the recommendations in this report.

## **6. COUNCIL CORPORATE PLAN OBJECTIVES 2009-2012**

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 impacts on the following:-

- (i) A Safe, Secure and Welcoming Environment
- (ii) Healthy, Caring Communities
- (iii) A Prosperous, Sustainable and Inclusive Economy
- (iv) Educated, Responsible and Informed Citizens
- (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 (EqIA) with the following outcome: Assessed as not relevant for the purposes of EqIA.

## **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 Land Reform (Scotland) Act 2003 Part 1 places duties on Councils as apposed to Parts 2 and 3. The outcome of the LRRG is likely to have implications for both Part 1 (public access rights) and for possible future transfer of Council assets to communities. Therefore submitting a formal response to the Call for Evidence is appropriate. In addition due to the similar themes shared by this and the Community Empowerment and Renewal Bill Consultation, the Council's response to that will also be forwarded.

**BARBARA RENTON  
DEPUTE DIRECTOR (ENVIRONMENT)**

## **NOTE**

No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (and not containing confidential or exempt information) were relied on to a material extent in preparing the above Report.

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**Date of Report** 22 January 2013

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Council Text Phone Number 01738 442573

### **Land Reform Review Group: Call for Evidence Brief**

#### **Introduction**

You are invited to submit evidence to assist the work of the Land Reform Review Group (LRRG). The Group has been set up by the Scottish Government. The Government has asked LRRG to develop innovative and radical proposals that will contribute to Scotland's future success. The Group's remit is attached at Annex A.

The Review Group is chaired by Dr Alison Elliot. Its vice-chairs are Dr Sarah Skerratt and Professor James Hunter. Brief biographical details are at Annex B. LRRG will draw on the expertise of a 12-strong advisory panel whose names, together with brief biographical details, are at Annex B.

LRRG's work will be taken forward independently of Government. The Group's workplan is at Annex B. The Group expects to make a first report, outlining proposals that can be implemented relatively promptly, in May 2013. A draft final report will be completed in December 2013. A revised final report will be submitted to Government in April 2014. It is expected by Government that the report will include recommendations as to how further land reform can be promoted and secured.

LRRG has been given a wide remit. The Group's work and recommendations will have implications for cities and towns as well as for the countryside. To ensure that its reports are as soundly-based as possible, LRRG wishes to draw on the experience and knowledge of both organisations and individuals with an involvement or interest in land ownership, access, farming, crofting, forestry, the natural heritage, social and affordable housing, planning, economic and community development. The Group will also be happy to hear from others.

#### **Issues for your consideration**

As its Remit states, LRRG will identify how land reform will:

- Enable more people in rural and urban Scotland to have a stake in the ownership, governance, management and use of land, which will lead to a greater diversity of land ownership, and ownership types, in Scotland;
- Assist with the acquisition and management of land (and also land assets) by communities, to make stronger, more resilient and independent communities which have an even greater stake in their development;
- Generate, support, promote and deliver new relationships between land, people, economy and environment in Scotland.

You are invited to think about how those potentially far-reaching objectives can best be accomplished and to share your views with us.

When compiling your submission it would be helpful if you'd address each of the above bullet points separately and if, dealing with each of the bullet points in turn, you'd:

1. Outline your vision of *how* things could be different and explain *why*, in your opinion, they *should* be different;
2. Indicate any barriers there may be in the way of attaining your vision;
3. Suggest how these barriers could be removed and progress facilitated – whether by voluntary, legislative, fiscal or other means.

Please be as specific as you can, referring to particular opportunities, difficulties and experiences. We appreciate that our remit is such as to result in very many topics falling within its scope. There's no need for you to try to deal with all of these. Please feel free to concentrate on matters of most concern to you or your organisation. Feel free, too, to indicate what aspects of the wider land reform agenda ought, in your opinion, to be given priority by the Scottish Government and Parliament. In compiling your submission, you should be aware that LRRG has been asked by Government to have regard to:

- The sustainability of its proposals for reform, including their economic impact;
- The importance of good stewardship and governance of land;
- The relationship between urban and rural concerns and opportunities;
- The relationship between local and national interests.

You might wish to consult a research paper, *Overview of Evidence on Land Reform in Scotland*, published by the Scottish Government in July. This paper is available at: <http://www.scotland.gov.uk/Resource/0039/00397682.pdf>

The *Overview* deals mainly with the impact of the Land Reform (Scotland) Act of 2003 and with the extent to which that Act has delivered, or failed to deliver, the Scottish Parliament's land reform objectives. One of LRRG's tasks will be to make suggestions and recommendations as to how the 2003 Act might be amended in ways that, for example, make it easier for communities to obtain ownership of land and/or other assets.

We should like to hear how this might be done. We should especially like to hear from individuals, organisations and communities who have made use, or thought about making use, of the provisions of the 2003 Act. How do you think the Act's land reform objectives could be more effectively achieved?

More widely, how might communities outside the Highlands and Islands, where most community ownership initiatives have so far taken place, be encouraged to think about ways in which such initiatives might improve their prospects?

Our work will not be limited to consideration of existing legislation. Already our attention has been drawn to a variety of potential reforms that would, for example:

- Expand community ownership of land, housing and other assets in both town and country and in all parts of Scotland;
- Diversify and broaden ownership of land in Scotland, where more land is owned by fewer people than anywhere else in Europe;
- Encourage (or oblige legislatively) owners of land to give local communities a greater say in how land is managed and used;

- Make it easier and cheaper for Forestry Commission land and other land in public ownership to be transferred to others;
- Improve the supply and lower the price of land for affordable and other housing in both town and country;
- Help create new pathways, for younger people especially, into farming and crofting;
- Enhance the position of tenant farmers by giving them a right (similar to the right enjoyed by crofting tenants since 1976) to buy their farms;
- Replace Council Tax and Business Rates with a tax on land values;
- Change the way in which fresh water resources are owned and managed in order to secure wider community benefit from these resources;
- Change the law of succession as it affects ownership of land.

These examples are listed here to indicate the potential scope of our enquiries (and to encourage submissions under these and other headings) rather than as pointers to our thinking.

### **Submitting evidence**

To allow the Land Reform Review Group to explore and analyse evidence submitted to it and to enable the Group to identify key themes for further exploration, responses are invited by **11 January 2013**.

Where you have already made a relevant submission in connection with the Community Empowerment and Renewal Bill consultation, you may wish to refer to these responses in your LRRG submissions and indeed copy your responses – with additional comments as appropriate – to LRRG.

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return with your evidence submission the *Respondent Information Form* at Annex C – as this will ensure that we treat your response appropriately. If you ask for your response not to be published, we will regard it as confidential. All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

At the end of the review process, and after the final report is published, we will publish your responses on the review web page, subject to any requests for anonymity. An example of the format of these published responses can be seen on the Independent Budget Review website ([www.independentbudgetreview.org](http://www.independentbudgetreview.org)).

As well as issuing this Call for Written Evidence, LRRG will be seeking evidence directly from a range of individuals and organisations the Group considers to have specific contributions to make to LRRG's work. Therefore, as indicated in the attached workplan (Annex B), the Land Reform Review Group will, in the course of its work, be meeting with, listening to and interviewing a number of people and organisations with particular experience of issues that are of interest to LRRG. Details will be available from time to time on the Group's website.

Electronic responses should be emailed to [landreformreview@scotland.gsi.gov.uk](mailto:landreformreview@scotland.gsi.gov.uk) and for those who do not have access to email, hard copies should be sent to:

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Broomhouse Drive  
Edinburgh  
EH11 3XD

Thank you for your interest and for your help.

Alison Elliot  
Sarah Skerratt  
James Hunter

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### Land Reform Review Group: Call for Evidence Perth & Kinross Council Response

#### 1.0 Introduction

- 1.1 As Access Authority for most of Perth & Kinross, the Council has considerable experience of Part 1 Access Rights. Land ownership and management is a fundamental aspect of public access rights. Through responsible management in terms of the Land Reform Act public access is achieved, where it is not responsible public access may be compromised. Particular issues arising from Part 1 of the Land Reform Act (LRA) are dealt with in the latter part of this response.
- 1.2 The Council has to date received no enquiries in relation to Part 2 of the Land Reform Act. The Community Right to Buy. However the Council has both land and property some of which could be considered appropriate for purchase, lease or an increased level of management by interested communities.
- 1.3 The Council understands the value of community engagement and participation at every level and actively encourages communities to take a lead and/or work in partnership with the Council and other key partners towards the enhancement and management of their environment. A key issue for councils is democratic representation and the need to be sure groups claiming to represent the community are duly elected and accountable with good responsible open governance methods in place. This is essential when communities consider taking on public assets. Councils are no longer able to be the sole provider of high quality public assets and services but are well placed to have a key role as a facilitator and coordinator of partnership working. Councils have good contacts, accountability, management structures, financial controls, powers, knowledge and expertise which can all be used effectively within partnerships where communities could play a central role (also see response in Community Empowerment and Renewal Bill Consultation (CE&RBC) Q2 – 5 & 17).
- 1.4 As requested this response addresses each of your bullet point objectives (shown as embolden text) separately. The response provides a brief summary of the issue raised, a vision for improvement and suggests barriers and possible solutions.
- 1.5 The Council provided a response to the CE&RBC and where relevant cross reference has been made to this response which is also provided as an appendix to this submission.

## 2.0 LRRG Objective 1

**Enable more people in rural and urban Scotland to have a stake in the ownership, governance, management and use of land, which will lead to a greater diversity of land ownership, and ownership types, in Scotland;**

### **The Issues**

- 2.1 The Council owns land and buildings which are currently managed for amenity benefit. These include parks, sports pitches and greens, gardens and other green spaces associated with residential areas, cemeteries, caravan/camping sites, countryside sites and path networks, which often link to and through many of these green space areas. Most of these council assets have traditionally been managed by the Council often with community consultation and/or engagement informing the priorities for development and maintenance of individual sites/areas. In some cases specialist interest groups (for example Friends of the Parks) have worked in partnership with the Council to secure improvements. With declining budget resources there will be pressures on the Council to maintain all areas to a high standard. The Council is currently in discussion with a number of local groups and community bodies regarding the potential for them to take on the more operational management and maintenance of public land although the Council will retain the ownership of the land. In order to achieve this the following land tenure issues are relevant.
- 2.2 Long-term lease agreements may relieve the Council of the responsibility for maintenance of this land and future savings can be used in relation to higher priority open space. At the same time this empowers the user groups allowing them to increase the standard of the sites they are responsible for and develop them in line with their own agreed priorities.
- 2.3 Councils may also own land and buildings which are known to be surplus to requirements and might be suitable for community purchase or long term lease where communities can demonstrate social and economic benefits.
- 2.4 There is also 'Common Good' land which is owned by the local authorities and administered having regard to the interests of the inhabitants of the former burghs. These areas may be sought after for varied purposes, for example as potential allotment land. This Council has, with the consent of the Scottish Ministers, recently leased unused land held on the Housing Revenue Account to a community group for use as allotments.

## **The Vision**

- 2.5 More community groups with sustainable proposals and effective business plans could take over ownership or long term lease of areas of particular value to their communities so that increased levels of development, promotion and maintenance could be achieved. This would lead to greater diversity of areas which would reflect local interests and character and increased pride of place. Communities are able to access funding sources not available to councils.
- 2.6 For example, a community may take on a caravan park/camping site and manage it to reflect local priorities and maximise benefit to the local economy. A local priority may be to provide a large area suitable for tents to encourage active sports enthusiasts and greater use of local catering outlets rather than catering mainly for static caravans. In another example, a housing association may take on their local amenity green space, and transform it from an area where the Council priority may be to create an area which is easily maintained, to an area that the Housing Association's residents can use to maximum effect reflecting local need and priorities.

## **Barriers & Possible Solutions**

- 2.7 Barriers to the purchase of land by communities may include councils' statutory obligations to dispose of land for best reasonable consideration and to achieve best value. It is possible to dispose of assets for less than best consideration where this promotes objectives such as economic development or regeneration.
- 2.8 This Council is developing policies to inform community groups and others seeking to take over council property and to clarify its disposals policy and process and the statutory constraints under which it operates. Clear policies and, where practicable, a register of available land and property could assist.
- 2.9 A single contact point who can advise community groups on the necessary procedures could help facilitate community purchase or leases.
- 2.10 In disposing of land or buildings the Council would have to be sure that the community taking on the asset is properly constituted to do so, has public liability insurance, has significant and continuing community support, could maintain it to an appropriate standard and that they had a sustainable proposal for use of the asset.

Any community interested in taking over assets needs to fully understand the requirements and responsibilities involved. Training and advice should be available to communities both locally and nationally so that they are able to ensure that they can prepare an appropriate business case for discussion with the Council. It may be that an independent community advisor is required to avoid conflict of interests within the Council (see CE&RBC Q 21 – 27)

- 2.11 Change of use planning applications can be cumbersome, costly and time consuming. It may be possible to simplify this process for example by use of permitted development rights to change land for allotment use.
- 2.12 Legislation may require to be altered to make it possible to dispose more easily of assets to communities where there is a clear benefit and business case demonstrating that the community is best placed to own and/or manage that asset. In this case communities may have an unfair advantage over private operators.  
(see CE&RBC Q22-37 & 46)

### **Detailed Comment: Allotment Provision**

#### **The Vision**

- 2.13 Communities are able to secure vacant or underused land which is known to be fit for purpose for growing food and if appropriate providing an amenity garden for community use.  
Every community should have access to this resource to a level to meet current demand, wherever possible.
- 2.14 The community resource should be accessible to all and local enough to be within walking distance for the majority, wherever possible.  
Agreed aims for the community in relation to this land should be developed and should include considerations such as potential to improve biodiversity, use as an outdoor classroom and how to make best use of products.
- 2.15 While private plots may be appropriate, space should be allocated to the community as a whole so that no-one is excluded.  
Secure storage space should be available for communal tools.  
Health and well being, social cohesion, and self reliance within communities would all be increased.

#### **Barriers & Possible Solutions**

- 2.16 Local authorities have a duty to provide allotments under the Allotments (Scotland) Act. If there are no allotments in the area a procedure for requesting provision is in place. Where the authority determines there is a demand and agrees to act there is no prescribed timescale. Currently Scottish Ministers' consent is also required to release Housing Revenue Account land for allotments. This can be a lengthy process depending on the complexity of the application. Land Quality Assessments need to be undertaken to determine the land is 'fit for purpose' and to identify any potential constraints or contamination issues which could prevent it being used for the proposed use.

- 2.18 There may be additional permissions needed to release ‘Common Good’ land for allotments. The planning process can cause further complications in setting up allotments with individual permissions often proving more costly and difficult to both apply for and approve. Block applications or change of use status may be appropriate. These processes require simplification to ensure that willing councils can prioritise and fast track provision of allotments.
- 2.19 Given that resources are reducing in the public sector, councils will not be able to provide allotments in a short or even medium term. Community groups could usefully be encouraged to take the initiative in identifying sites and ensuring that they are properly constituted for taking on establishment and management of allotments. Councils are well placed to support communities at all stages, including with training and access to start up grants.
- 2.20 Clarity is required regarding which land is potentially available and what the ownership and status of the land is. A register could be compiled and maintained for public inspection in respect of available land.
- 2.21 Where land is released for allotments, agreements with regard to future management should be in place and reviewed regularly to ensure there is ongoing genuine community benefit (see CE&RBC Q28, 31, 32 & 34).

### **3.0 LRRG Objective 2**

**Assist with the acquisition and management of land (and also land assets) by communities, to make stronger, more resilient and independent communities which have an even greater stake in their development;**

#### **The Vision**

- 3.1 Where land is currently in private or public ownership and there is a strong community desire to own or manage that land for particular purposes it should be possible for councils and others to assist. This could result in better use of vacant or underused land for community led projects.
- 3.2 For example, development of otherwise vacant land for growing areas such as orchards, community gardens, allotments or small holdings. These sorts of developments could be easily accessible to the local community and would increase sustainability, biodiversity value and health, reduce dependence on shops and transport and encourage all ages and abilities to make meaningful connections with the environment.

- 3.3 Another example is in communities currently struggling with the negative effects of tourism, especially in relation to irresponsible roadside camping (see below for further details), purchase of appropriate land could facilitate provision of small scale camp sites. These sites could be run by the community to cater for tourist demand and could help invigorate rural economies.

### **Barriers & Possible Solutions**

- 3.4 Landowners may be unwilling to release land for either purchase or long term lease. This may be because of possible future more lucrative opportunities to dispose of the land. It may be that more could be done to inform private landowners of realistic options for land through discussions with planning departments.
- 3.5 Landowners could be encouraged to work in partnership with communities through provision of information to these landowners on other existing good practice case studies. Organisations such as Scottish Land & Estates is currently providing this sort of information, councils could assist with this sort of provision of information on a case by case basis. This would include information about any financial and/or practical incentives for landowners.

### **Detailed Comment: Camping Issues**

- 3.6 Irresponsible behaviour by access takers while camping is a problem in several scenic areas, especially near roads and waterways. This is a problem in parts of Perth & Kinross and in many other areas of Scotland.
- 3.7 Many locations are well known and used intensively so that each individual group of campers add to a much larger and long term problem. This sort of camping creates several problems including:
- Litter and mess, (including fire related mess)
  - Human waste
  - Noise & annoyance for local community
  - Occupation of scenic areas so that day trippers are unable/unwilling to access these areas
  - Vandalism and theft of property such as trees and fencing which are often used for fires
  - Disturbance and damage to the natural heritage
  - Fire risk
- 3.8 In the area around Lochs Rannoch and Tummel, the Council has worked with communities and the police to encourage campers to behave responsibly. This work is however in the context of the Act providing for camping without permission. Although there is a very nice small scale, affordable camp site provided by the Forestry Commission near Loch Rannoch, this is not used by the majority of campers in the area. Many prefer to be next to the loch and to not pay.

## **The Vision**

- 3.9 A vision for improvement would be no camping taking place outwith designated areas unless it was truly wild camping as described by the Scottish Outdoor Access Code. There would, however, be many sites offered by landowners (estates, farms or community land) where, for minimal fees and basic facilities, campers could enjoy a quality experience. It may be that communities have greater incentive to purchase appropriate land for this purpose. It is unlikely to be a commercial venture as these sites should cater for small numbers.
- 3.10 The benefits to the community would be a much more attractive area not littered and occupied by tents all season. This would be likely to lead to increased tourism with resultant benefit to the economy. Increased national campaign effort would tackle the littering issue and much greater social pressure would result in more attractive and unspoilt scenic areas.

## **Barriers & Possible Solutions**

- 3.11 The provision for camping without permission in the Land Reform Act Part 1 (Section 9) is supplemented by guidance in the Scottish Outdoor Access Code (SOAC) which makes it clear that responsible camping should be 'wild'. This guidance however does not prevent the widespread irresponsible camping currently seen throughout Scotland.
- 3.12 Part of the problem in many areas of Scotland, and certainly within Perth & Kinross, is the lack of small scale, rural camping areas offering a suitable 'escape' to scenic areas. There is often no land available and no landowners willing to develop this sort of facility. A wider problem strongly related to this issue is the general lack of value people place on the environment and the associated littering culture which seems prevalent throughout the UK.
- 3.13 The Land Reform Review could ensure that private land can be made available for community purchase or long term lease. Ensure grants and sources of funding are available to ensure purchase is possible.
- 3.14 Duties could be placed on councils and other bodies to assist communities with land acquisition. As the Council cannot give advice to third parties, an independent advisor would be required.
- 3.15 Communities affected by this issue could be empowered to seek solutions through possible purchase and/or active management of suitable land to be made available to campers.
- 3.16 Financial incentives to private landowners (including Forestry Commission and councils) could be made available to provide land for community benefit.

- 3.17 Modify Section 9 of The Act (if adequate camping sites can be provided) to exclude the conduct of camping within a set distance (eg 500m) of a public road.
- 3.18 Powers could be given to the Police to move campers on from areas excluded from access rights.

#### **4.0 LRRG Objective 3**

**Generate, support, promote and deliver new relationships between land, people, economy and environment in Scotland.**

##### **The Vision**

- 4.1 Community groups are well placed to lead improvements in their local areas. Where this is taking place currently it is often through the formation of Development Trusts. These Trusts are able to gauge opinion locally through consultation and develop priorities and proposals for agreed actions. They can then drive improvements through involving key partners such as councils, and empowering local voluntary action.
- 4.2 These communities are well placed to access funding from a wide variety of sources, to oversee works and ensure ongoing maintenance.
- 4.3 Active community groups are being actively sought and encouraged by councils to take on increasing responsibilities for development, promotion and maintenance of valued assets.
- 4.4 Communities and individuals are further encouraged and supported to take an active part on a practical level in environmental improvements in their areas, often working as part of a wider initiative led and supported by councils or other bodies. Such initiatives improve the appeal of local areas to both locals and tourists producing vibrant and diverse Villages or Towns and encouraging local economies. Through involvement health and wellbeing improves, social cohesion is improved with stronger bonding in communities and more active clubs and societies.
- 4.5 Where there are conflicts around a resource (such as a dispute between riparian owners with commercial angling interests and commercial raft operators), innovative solutions are found so that contributions of both tourist industries to the economy of the area can be maximised and good relations between parties involved encouraged.



- 4.6 In some cases improvements on private land for community benefit are identified by councils through consultation. Where landowners are reluctant or oppose such improvements communities can play an essential role in pushing forward and part funding these projects. (see CE&RBC Q 16, 21 -24)

### **Barriers & Solutions**

- 4.7 Communities can sometimes lack knowledge and motivation required to identify and drive improvements. Initiatives such as the Council's 'Placecheck', often carried out as a partnership between the Council and local Communities, can help communities understand how much can be achieved.
- 4.8 Invitations to celebrations of success can help motivate communities lacking drive. For example the Take a Pride in Perthshire groups are supported by the Council with annual awards providing opportunities to share knowledge of good practice.
- 4.9 Communities who are motivated may lack the knowledge or ability to drive improvements forward. Capacity building and training should be readily available to all appropriate communities. Where communities are small or incapable of identifying or carrying through projects additional help should be available to them perhaps through the funding of a Project Officer. Such groups and activities should be encouraged and supported both at local levels through councils and other partners and also at national level through relevant organisations. National training programmes and celebration of success events should be well publicised and available to all.
- 4.10 Although communities have access to some excellent funding sources, the conditions are in some cases too restrictive making project delivery complicated and difficult. This can be a barrier to individual and future projects and can de-motivate communities. There is, for example, often a presumption against two sources of funding from the public sector while at the same time each source will only supply partial funding.
- 4.11 It is also more difficult to secure funding for ongoing maintenance which does not encourage sustainable development of either the improved resource or community ability. Changes in funding package conditions would improve this situation.
- 4.12 Voluntary action in many areas should be encouraged both nationally and locally with promotion of well resourced schemes and practical training and assistance at council level. Councils should be encouraged and resourced to invest in community action with trained and dedicated staff and other resources made available. In conflicts over resources more recognition should be given to the status and value of voluntary agreements and codes of practice. These may be easier to reach if greater public involvement from the wider community could be instigated.

- 4.13 Where private landowners oppose improvements which could benefit the wider community the LRA provides a solution through the use of Path Agreements and if necessary Path Orders. In practice it can be very difficult for councils to obtain signed agreements and progress projects within an acceptable timeframe. Some additional guidance and support from national champions/experts in this field may help make the process more achievable.

#### **LRA Part 1**

- 4.14 Although the emphasis of the Call for Evidence is on Parts 2 and 3 of the LRA, public access rights and how they are provided for by Part 1 of the Act has a direct bearing on the stated objectives. Empowered communities and individuals wishing to facilitate and improve responsible public access can find that this is impossible when faced with uncooperative landowners/managers. The camping issues section above provides an example of how Part 1 issues require attention.

### **5.0 Additional LRA Part 1 Access Rights Issues**

- 5.1 In its capacity as Access Authority the Council has extensive experience in considering the application of the provisions of Part 1 of LRA to uphold access rights. There several issues with regard to Part 1 on which we wish to comment. An underlying requirement is for revisions to both Act and Code and for these to be fully cross referenced especially in relation to where access rights do not apply (Section 6, 7 & 10). Further issues are outlined below.

#### **Enforcement Powers**

##### **The Issue**

- 5.2 The provision for access rights in the Act is for responsible access only. The Act places duties on land owners and managers to respect access rights. The Act places duties on Access Authorities to uphold access rights and provides powers (Section 14) to enable them to do so. These powers do not, however, present a credible deterrent to counteract irresponsible behaviour by land managers, or reflect the number of obstructions to public access which exist.
- 5.3 The figures from the Scottish Government monitoring shows that only two notices were served last year. Only 31 S. 14 notices have been served by 36 Access Authorities in 7 years since the Act was enacted. It is not clear how many of these were appealed or were ultimately successful/effective.  
([www.scotland.gov.uk/Topics/Environment/Countryside/16328/Access Authorities](http://www.scotland.gov.uk/Topics/Environment/Countryside/16328/AccessAuthorities))

- 5.4 Experience suggests that the lack of action to uphold access rights stems not only from a reticence on behalf of Access Authorities to use the LRA powers, but from the difficulties in demonstrating that the obstruction is on access land, who is responsible for the alleged irresponsible management behaviour, and why he or she acted in this way (is the purpose or main purpose to deter access?).
- 5.5 There is no effective remedy for landowner/managers who suffer the effects of irresponsible access takers. It is often impossible to identify or prove who did the damage. It is not considered acceptable for landowners to obstruct public access even where they can demonstrate there is a history of irresponsible access.

### **Barriers and Possible Solutions**

- 5.6 Use of enforcement powers through the court is very costly to access authorities and other interested parties (such as Ramblers Scotland and landowners). The few cases which have been taken to date have not provided enough clear guidance to encourage further cases.
- 5.7 A partial solution could be to turn the burden of proof around so that once a notice is served on a landowner and has run its course the access authority can remove the obstruction itself. Although the owner could still appeal, while this process was taking place, public access would not be obstructed.
- 5.8 It may be useful to provide a fast track for LRA cases ensuring that costs are minimised and perhaps using a specialist court to deal with all cases.

### **Judicial Determination of Access Rights**

#### **The Issue**

- 5.9 Under Section 28 (6) landowners who are seeking a declarator regarding public access rights need only serve the application on the local authority. This can result in the parties with the most direct interest being excluded from the process. An example of this issue occurred during the dispute between two commercial interests in relation to the use of River Tay. Riparian owners with commercial angling interests served PKC with an application for a declarator to determine whether commercial rafting companies were behaving responsibly. The allegation was that this activity causes unreasonable disturbance to angling interests. The commercial rafting interests were not party to full information, did not engage their own legal council and did not contest the issue. They later engaged legal council, appealed the judgement and parties eventually settled out of court.

### **Possible Solution**

- 5.10 Section 28 could be modified to ensure that adequate information is required to be provided to all interested parties.

### **Exemptions from Access Rights**

#### **The Issues**

- 5.11 Provision to exclude land from access rights is given by Section 11. This power is most commonly used by this Council to temporarily exempt forest tracks for motorsport events such as car rallies. As this power exists under LRA it does not apply to rights of way which have been asserted under alternative legislative means. Although core paths can not currently be legally closed through S 11, the need to be responsible in relation to taking access on core paths applies, while this does not apply to rights of way. It would clearly be dangerous for anyone to take recreational access on a track at the same time that it is being used for motorsports. Exemption orders are currently confusing as they note that the exemption does not apply to rights of way within the exempted area.

### **Possible Solution**

- 5.12 Where there is a legitimate need to exclude land from access rights this should apply to all land including established rights of way or core paths. The legislation should be adjusted so that clarity is provided to both event organisers and access takers.

### **Core Paths Planning**

#### **The Issue**

- 5.13 When preparing the Draft Core Paths Plan for Public Inquiry, confusion arose within this and in other access authorities with regard to whether the access authority had the right to modify the Draft Plan where objections which were not withdrawn, existed prior to submitting it to Inquiry. This confusion caused considerable delay and waste of public money.

### **Possible Solution**

- 5.14 Clarify S.18 (3) to state clearly whether access authorities have the power to modify a Draft Core Paths Plan in cases where objections have not been withdrawn. Need to update the Guidance to Local Authorities to clarify the process for consultation and preparation for the inquiry.

## **Public Access and Railways**

### **The Issue**

- 5.15 There are instances where well established paths or routes cross railways. In some cases these routes are asserted rights of way or core paths. In other cases there are well established public or private crossing points. There has been ongoing debate for many years with regard to whether responsible access (as provided for in LRA) applies to such crossing points. It would appear that there is a legal presumption against crossing a railway but on a practical level this does often not make sense.

### **Possible Solution**

- 5.16 Section 6(1)(g)(ii) It would be especially helpful if this section was modified to make clear that whilst access rights do not apply to live railways on account of the “statutory undertaking”, access rights may be exercised over/under railway bridges, level crossings, underpasses and other infrastructure designed to facilitate passage. Changes to s. 6 (1) could be usefully reflected under S.6 (2).



## **Appendix 3**

### **Perth & Kinross Council Response to Community Empowerment & Renewal Bill Consultation**

# 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.**