



**AGENDA ITEM**

**5**

**COMMUNITY  
EMPOWERMENT  
(SCOTLAND) ACT 2015**

**FALKIRK COUNCIL**

**Subject: COMMUNITY EMPOWERMENT (SCOTLAND) ACT 2015**  
**Meeting: EXECUTIVE**  
**Date: 7 JUNE 2016**  
**Author: DIRECTOR OF CORPORATE & HOUSING SERVICES**

**1. INTRODUCTION AND BACKGROUND**

- 1.1 Members will recall a previous report to Executive in which a commitment was made to update Members of any progress in relation to the Community Empowerment (Scotland) Act 2015. The report informs Members on the areas of the Act where draft guidance or regulations have been issued for consultation, provides a summary and a proposed response on these. The report also provides Member with information on progress in relation to locality planning and participatory budgeting as well as other key aspects of the Act.

**2. BACKGROUND**

- 2.1 The Community Empowerment (Scotland) Act 2015 was passed by the Scottish Government on 17<sup>th</sup> June 2015. It is still the case that in most cases secondary legislation and guidance have to be developed before the legislation can come into full effect. It still is expected that most parts of the legislation will come into being within the next year.
- 2.2 The Act was drafted in response to recommendations in the Christie Commission Report that highlighted one of the best ways to improve well-being and tackle deprivation was to involve people and communities in decisions that affect them. Overall the Act hopes to empower communities through the ownership and control of land and buildings and by strengthening their voices in decisions about public services.
- 2.3 The Community Empowerment (Scotland) Act 2015 is a wide ranging piece of legislation designed to further devolve power from local and national government to local communities. There are 11 topics covered by the Act:
- National Outcomes;
  - Community Planning;
  - Participation Requests;
  - Community Right to Buy;
  - Asset Transfer Functions;
  - Delegation of Forestry Commission Functions;
  - Supporter Involvement in Football Clubs;
  - Common Good,
  - Allotments;
  - Participation in Public Decision Making including Participatory Budgeting and
  - Non Domestic Rates.

Consultation papers have been issued on:

- Draft Guidance and Regulation for Community Planning – Closing Date – 13 June 2016. [community planning guidance](#)
- Draft Regulations on Participation Requests – Closing Date – 15 June 2016. [participation request regulations](#)
- Draft Regulations on Asset Transfer – Closing Date – 20<sup>th</sup> June 2016. [asset transfer procedures](#) and
- Secondary legislation relating to part of the land reform Act (which is part of the new duties in relation to Community Right to buy). Closing Date – 20 June 2016. [abandoned land](#)

2.4 This report will focus on these elements of the Act. It is worth noting that Regulations are a type of secondary legislation and set out detail or technical issues and are a matter of law. Guidance gives advice about what to do about the Act and the regulations i.e. more practical advice on how to implement and take forward the Act. Each of the responses was issued separately and should be responded to separately. The closing date for all responses is different and noted above.

### **3. COMMUNITY PLANNING**

- 3.1 This part of the Act sets out updated expectations with regards to community planning. Members will be aware that the responsibility for leading and delivering community planning came into being in the Local Government Scotland Act 2003. This Act amends and changes the role local authorities have in community planning from that of a lead to being an equal partner. The previous report to the Executive noted the partners and individuals listed in the Act.
- 3.2 The Act requires that community planning must be carried out by local authorities and a number of individuals and organisations. Local authorities, the organisations and persons listed in the Act have to work with each other and community bodies to improve outcomes delivered by public services.
- 3.3 Community Planning Partnerships (CPPs) will also be required to consider which organisations are likely to be able to contribute to community planning. They will have to have particular regard to community bodies or organisations which can represent people experiencing poverty. They will have to make all reasonable efforts to secure the participation of those community bodies in community planning and to take reasonable steps to enable the community body to take part.
- 3.4 Community bodies are defined as groups of residents that come together and are established for any purpose in the area of the Community Planning Partnership. The group can reflect communities of interest as well as geographic communities.
- 3.5 The Act requires that a Community Planning Partnership must act with a view to reducing inequalities of outcome which result from socio-economic disadvantage unless the partnership decides that it would be inappropriate to do so.

- 3.6 The draft guidance and regulations provides community planning partners with a set of principles. These set out the expectations the Scottish Government has of community planning and cover a number of issues including
- Shared leadership
  - Governance and accountability
  - Community participation and co-production
  - Focus on prevention
  - Tackling inequalities
  - Resourcing improvement
  - Effective performance management.
- 3.7 The principles underpinning these headings are set out in appendix 1 of this report.
- 3.8 The draft guidance and regulations also make provision for two mandatory plans - a Local Outcomes Improvement Plan and Locality Plans.
- 3.9 The first of these is the production and publication of a Local Outcomes Improvement Plan (LOIP). Within Falkirk our new Strategic Outcomes and Local Delivery Plan (SOLD) will meet the statutory requirement for a LOIP. The guidance requires this to be in place and signed off by 1 October 2017. The new Strategic Outcomes and Local Delivery Plan will hopefully be signed off by the Community Planning Partnership board at its meeting on the 8 June. This will then be subject to further work re delivery plans by key delivery groups such as the IJB, Children's Commission etc. It is hoped that the new Plan will be ready to present to Council at its meeting towards the end of June 2016.
- 3.10 The other requirement covers Locality Plans, which are focused on tackling the most significant local inequalities, and are underpinned by meaningful engagement, with and participation by, local communities in the determination of local priorities. They need to be based on a sound understanding of local communities' needs, circumstances and opportunities. All key Community planning partners need to agree the content of Locality Plans. They also need to be reviewed and kept up to date. Locality Plans need to be in place for 1 October 2017.
- 3.11 We have been asked to respond to 9 questions in relation to Community planning – the questions and the Councils response to the questions are attached as Appendix 2.

*Progress on the development of Locality Planning*

- 3.12 As stated previously the Community Empowerment (Scotland) Act 2015 requires that Community Planning Partnerships develop locality plans which address issues of inequality. The main purpose of locality planning is to ensure that we identify where within defined localities communities and individuals are disadvantaged and suffer inequalities. The suggestion within the guidance is that locality plans should cover populations of less than 10,000 people furthest from achieving outcomes and put in place interventions to address these inequalities. As a key partner within the Community Planning Partnership and already having a Community Participation Strategy, the Council is well placed to shape and support this work.

3.13 The purpose of a locality plan is to determine:

*'local outcomes to which priority is to be given by the Community Planning Partnership with a view to improving the achievement of the outcomes in the locality [...] a description of the proposed improvement in the achievement of the outcomes, and [...] the period within which the proposed improvement is to be achieved.'*

- 3.14 In order to progress locality planning the new SOLD sets out a general framework for locality planning underpinned by participatory budgeting. This framework builds an outcome improvement process with measurable targets and a timeline within locality and more focussed community action plans. Locality plans must be clear on what action will be taken by each partner within a locality and more specifically focussed on local communities to address priorities and achieve outcomes. This will fully integrate with the SOLD.
- 3.15 Locality planning will provide an opportunity for community groups and organisations across the Falkirk Council area to play a part in identifying key local actions, to be involved in defining how relevant outcomes can be achieved and to propose ways in which the community can draw on its local knowledge, organisation and people to shape their communities.
- 3.16 Locality planning must therefore be underpinned by effective community engagement. We need to ensure that the framework is inclusive and facilitates engagement and participation from local communities, whether they are geographically based or of interest. The Council's Community Participation Strategy has been used to help inform this proposal for locality planning.
- 3.17 In order to meet the requirements of the Community Empowerment Act and to progress our own planning needs it is proposed that Community Planning is developed across three main levels within the Falkirk Council area. These are:

**Strategic Level**

- The Community Planning Leadership Board will be responsible for establishing local outcomes and priorities for the Council area. These will be articulated in the SOLD Plan and underpinned by a variety of delivery groups comprising of a range of agencies including the key public sector agencies. A collection of delivery plans will underpin the SOLD including the Strategic Delivery Plan for Health and Social Care, the Economic Development Strategy etc.

**Locality Level**

- It is proposed that three localities will form the basis of locality planning i.e. three multi member wards combined across the area. These are: Central – Falkirk including Hallglen, East – Bo'ness, Grangemouth, Polmont and the upper Braes, West - Bonnybridge, Denny, Larbert and Stenhousemuir. These areas will be the basis for locality plans. These plans will initially set out the outcomes within the SOLD and how these are being achieved at this locality level. This will highlight where in each locality there are issues about achieving those outcomes within different communities that make up the localities. Planning for services etc. will also be developed at this level and have regard to the specific communities that make up these localities. Localities are based on three multi Member wards per locality.

## Community Level

- It is at community level where solutions will be developed through Community Action Plans. Community Action Plans will be designed to tackle the issues underpinning priorities and local outcomes developed at locality level. Community Planning partners will identify a number of appropriate officers to work with local communities in developing Community Action Plans and support them on their delivery. Work at community level will be reported upwards to the locality structure (whatever that may be) to assure that sufficient progress is being made on actions underpinning the attainment of local priorities and outcomes. This level of planning will replace and supercede the existing local community planning framework and will fulfil the requirement to plan for communities of 10,000 people or less.

- 3.18 These proposals are at an early stage in their development and further work needs to be carried out to ensure that proposals are robust and can be delivered practically. However before progressing further, I am seeking approval in principle to progress on the basis outlined above. This will allow officers to have further discussions with partners to start the development of this complex framework.

### *Participatory Budgeting*

- 3.19 One tool which can be used to help stimulate community engagement in locality planning and local solutions is Participatory Budgeting (PB). This offers a means of directly involving local people in the identification of spending priorities and the allocation of money within a defined public budget. It is aimed at strengthening participatory democracy; improving service delivery; improving the quality of local, well-targeted investment; empowering communities and providing an insight on how public bodies financially plan and take decisions. This is designed to put local people more at the centre of influence and decision making on the public services that they use. This does not replace local democracy or the decision making authority of Elected Members.

This is an element of the Community Empowerment Act which has not been subject to specific guidance. However, as other Councils and areas are progressing this already with central support it is important that we consider our approach to this in order to firstly take advantage of any further support the Government is offering and secondly to underpin our approach to locality planning.

- 3.20 At this stage therefore we are proposing a simple approach to PB which will allow communities, working in tandem with local Elected Members and partner organisations, to have their say on how an allocated amount of money for their area or area of interest should be spent. We would require that any money is allocated in accordance with the local priorities derived as a result of this planning framework and that what is achieved as a result is reported in an open and accountable way. We will ensure that the reporting mechanism to be used is both simple and easy to complete.
- 3.21 We therefore propose to develop a proof of concept in year 1, to mainstream within a rolling programme of PB thereafter. The proof of concept will take place in each of the 3 localities in year 1, taking the lessons we learn into other communities of place and interest in later years. This will allow the partnership to test and embed good practice into mainstream activity after year 1. We are particularly keen to learn how effective community-generated solutions are in comparison to the traditional ways we have allocated money in these areas. All those involved in PB will be able to give their input on how the approach has worked and on how we can improve it further.

- 3.22 This year, the Scottish Government has made £2m available through the Community Choices Fund to support the development and implementation of PB across partnerships. While PB is a statutory requirement, it also is an exciting opportunity to incentivise citizen participation in the Council area. It potentially offers opportunities to strengthen partnership working within the CPP and beyond, into our communities. Last year £500,000 was allocated across 20 local authority areas. It is anticipated that this year all 32 CPP's will seek support. It is therefore important that we make an application to this fund to support our efforts in this regard.
- 3.23 The application process for the funding will be, we anticipate, open in late May/early June. It is expected to be a highly competitive process. It is likely there will be two streams, one specifically for public authorities and one for community anchor organisations (which include Housing Associations and Community Councils). To access significant amounts of funding from here would require a degree of innovation in our approach to PB. There is certainly scope to do so, given the predilection for the community grants approach in Scotland. It is therefore proposed that an application for development funding is prepared and that during the coming weeks further work is done on preparing a model of PB that supports our outcomes and locality planning model.
- 3.24 In order to progress this work and to make the most of the opportunities that are available officers are seeking approval from Members in order to progress this approach.

#### **4. PARTICIPATION REQUESTS**

- 4.1 Draft regulations have been issued for Participation Requests. The Community Empowerment Act sets out a mechanism for community bodies to put forward their ideas for how services could be changed to improve outcomes for their community. This is called a Participation Request. There is a wide definition of what constitutes a community body for the purposes of submitting a participation request. The definition of outcomes is also broad. This will mean the Council or a public services authority will have a duty to establish and maintain an outcome improvement process. It is not clear in the regulations how or if this is related to the Local Outcome Improvements Plan or indeed locality planning. However this may become apparent once guidance is issued on this aspect of the Act.
- 4.2 The regulations summarise four stages of the participation request process:
- Making a request
  - Decision
  - Outcomes Improvement Process
  - Reports

##### *Making a request*

- 4.3 A participation request has to be made in writing by a participation body that wants to take part in an outcome improvement process. The regulations suggests the use of a statutory form as part of the legislative process to help participation bodies make requests and to provide a means of processing and monitoring requests. The consultation document on the regulations states that the final guidance will give more information on the details and examples of how to complete the form.

- 4.4 Once a participation request has been made the Council and other public bodies must acknowledge receipt of the request and provide a validation date (which is the date on which all the information required has been provided). If the community participation body does not provide all the information required, the public service authority has to notify the body identifying the information required in order to comply with requirements.
- 4.5 If the community participation body includes a request that more than one public service authority should participate in the outcome improvement process then the lead authority (i.e. the organisation or agency to whom the request was made) should:
- notify the additional public service authorities of the request;
  - inform the additional public service authorities of the validation date; and
  - send a copy of the participation request and the information provided by the Community participation body to each additional public service authority.

The additional public service authorities must inform the lead public service authority whether it wishes to participate and if it does not, the reasons for that decision. The current draft suggests that should be done within 14 days.

- 4.6 If a participation request is received and in the opinion of the receiving authority it is felt that the involvement and input of other public service authorities was necessary, they can be included within an established or proposed outcome improvement process. In this case, the receiving authority would be the lead in terms of the decision notice and the other public service authorities are expected to contribute as required.
- 4.7 It would be the responsibility of the lead public service authority in receipt of the request to secure the agreement of the other public service authority to contribute to the participation request as required. The Council will therefore receive these requests from other public bodies and will need to determine how to respond.

#### *Decision*

- 4.8 The Council and other public service authorities have to agree to or refuse any participation request it receives. As well as considering the reasons set out in the participation request put forward by the community participation body, the Council or other body must consider a number of other factors including:
- Whether agreeing to the request would be likely to promote or improve: economic development, regeneration, public health, social wellbeing, environmental wellbeing.
  - Whether agreeing to the request would be likely to reduce inequalities of outcome which result from socio-economic disadvantage.
  - Whether agreeing to the request would lead to an increase in participation and any other benefits that might arise.

The Council must agree to the request unless there are reasonable grounds for refusing it. Should the Council refuse the request then they must set out the reasons for their decision.



- 4.9 The Council has to therefore decide how to assess requests. The guidance may set out a broad range of factors with an emphasis on improvement and reducing inequalities. It is expected that the guidance will contain information on helpful approaches to an assessment process. However the regulations provide no information on this.
- 4.10 Once a decision has been made, a decision notice must be provided. As well as informing the requesting organisation, the decision notice must be published on a website – it is assumed this is the Councils website.
- 4.11 Once a decision notice has been given agreeing to a participation request then the Council will:
- Describe the outcome improvement process;
  - Specify what stage it has already reached;
  - Set out how the community participation body will participate in the process; and
  - Identify others that are part of the process and how they will participate.
- 4.12 This is to allow a community participation body to join a relevant outcome improvement process and participate in that process.
- 4.13 If an outcome improvement process has not been established then the decision notice will:
- Describe how the outcome improvement process will operate;
  - Explain how the community participation body is expected to participate; and
  - Describe how any other persons are expected to participate in the process.

#### *Outcomes Improvement Process*

- 4.14 The Act sets out the process which happens if an outcome improvement process is to be established. It allows a community participation body to propose changes to the Council (within a 28 day period) to the outcome improvement process. The Council must then take account of any proposals. The Council must publish on a website (or by other electronic means) information about the outcome improvement process including the names of the community participation bodies and public service authorities which are involved in the outcome improvement process, the outcome to which the outcome improvement process relates and how the outcome improvement process is to operate.

#### *Reporting*

- 4.15 The Council and other public authorities must report on participation requests and the outcome improvement process. When an outcome improvement process has been completed the Council must publish a report on the process. The report must summarise the outcome of the process, including whether the outcome to which it related has been improved, and describe how the community participation body that made the request influenced the process and outcomes. It must also explain how the authority will keep the community participation body and others informed about changes in the outcomes of the process and any other matters relating to the outcomes. In preparing the report, the public service authority must seek the views of the community participation body that made the request and any other community participation bodies involved.
- 4.16 Thirteen questions are asked in relation to this consultation paper. The questions and proposed response to the questions are attached as Appendix 3.

## **5. COMMUNITY RIGHT TO BUY ABANDONED, NEGLECTED OR DETRIMENTAL LAND**

- 5.1 Consultation has been invited on policy proposals relating to the new Part 3A of the Land Reform (Scotland) Act 2003 introduced by the Community Empowerment (Scotland) Act 2015 – the community right to buy abandoned, neglected or detrimental land. Information is included in the consultation document in relation to determining the land's value, appealing to the Lands Tribunal, compensation to owners and grants available to community bodies to pay compensation. The type of land includes boarded up shops and houses or algae filled ponds.
- 5.2 The legislation will give community bodies of a defined nature the right, in certain circumstances, to buy land without a willing seller, when the land is wholly or mainly abandoned or neglected, or the use or management of the land is causing harm to the environmental wellbeing of the local community. Before submitting the right to buy application the community body must fulfil certain criteria, for example:
- The community body must have tried to purchase the land;
  - The use or management of the land is causing harm to the environment;
  - Wellbeing of the local community, the community body must have approached all relevant regulators and asked that they take steps to reduce or remove the harm being caused to the community;
  - The purchase of the land must be in the public interest; and
  - The purchase of the land must be compatible with furthering the achievement of sustainable development of the land.
- 5.3 The proposals contained in the consultation paper discuss:
- Matters which Ministers are required to have regard to when deciding whether land is eligible land for the purposes of Part 3A of the 2003 Act, that is land which is eligible for purchase by the Part 3A community body;
  - Land pertaining to land on which there is a building or structure which is a person's home. Such land will also form part of the person's home so will not be eligible land;
  - Other forms of land which is not eligible land;
  - What forms of occupancy of possession of a home are, or are to be treated as, a tenancy of that home. Land on which there is such a home which is occupied under the terms of a tenancy is eligible land. Proposals discuss various forms of housing tenancy, and what land occupied under the terms of such a tenancy is eligible land;
  - A description of prescribed regulators that a Part 3A community body will be required to approach, where relevant, to request that the regulators take action to mitigate the harm being caused to the environmental wellbeing of the community;
  - What prohibitions or suspensions of rights will be placed on the transfer or dealing of land following receipt of a Part 3A application;
  - The circumstances in which the Part 3A community body can apply for the cost of the ballot to be reimbursed by Ministers; and
  - The procedure by which any person, other than the applying Part 3A community body, may apply for compensation in respect of a loss or expense incurred as a result of a Part 3A application.

- 5.4 There are 12 questions in relation to this consultation paper. The questions in this paper are technical. The questions and proposed responses are attached as Appendix 4.

## **6. ASSET TRANSFER REQUESTS**

- 6.1 Under the terms of the Act, community bodies will have the right to request to purchase, lease, manage or use land and buildings belonging to local authorities, Scottish Public Bodies or Scottish Ministers. Organisations that will be able to do this, will be called Community Transfer Bodies (CTB) and the nature of them will be set out in the legislation as noted below. The Act notes that there will be a presumption of agreement to requests unless there are reasonable grounds for refusal. A register will be required that contains details of land and assets held by the local authority; this should be available for inspection at any time.
- 6.2 The regulation consultation document sets out the process that should be followed in relation to making a request and the decision making process that a public service authority should then follow. A significant part of the regulations is taken up with a number of appeal processes that a community body can undertake in a number of different circumstances. Members should note that the Council will need to establish processes and systems for dealing with and managing these appeals.
- 6.3 The consultation document sets out again the need for a register of assets and land, notes the type of land that could be included in the register and lists the land that should not be included in the registers. It proposes that the register should include location, name and a basic description and any name it is known by locally. The register can be a database, list or spreadsheet in pdf but must be available online and for inspection in person. Information on a property must be provided on request, for example running costs, title burdens, condition, and maintenance issues.
- 6.4 The Act notes that a body requesting an asset can be a company, charity and/or unincorporated group. A CTB should be controlled by the community and have more than 20 members. The application should include details of the land, reasons for transfer, the benefits of transfer and the price, rental, duration etc. The draft regulations suggest that the Council additionally asks for the CTB's constitution, information on how the CTB intends to fund the transfer of land and its proposed use of land and the level of support it will require for the asset transfer request. It also proposes the CTB might wish to consult with the local community on its proposals and take steps to address any concerns and provide that information to the Council on making an application.
- 6.5 The Council has to acknowledge the request and inform the CTB if any information is missing. This acknowledgement is a regulatory requirement. The acknowledgement should include: a validation date, an explanation of the time period required to make a decision and information on the right to appeal. As soon as practical after a the validation date the Council must notify any tenant or occupier of the land that the request relates to and also publish a notice on-line and put a physical notice on the site. This notice should detail that an asset transfer request has been made, who the community body is and how the community transfer body intends to use the land. These details should be published on line and should be publicly available.

- 6.6 In deciding on the application, the Council should take into account the reasons for the request, and other supporting information as well as potential benefits for economic development, regeneration, public health, social well-being and environmental well-being. The Act then requires the Council to agree to the transfer unless there are reasonable grounds for refusing. There are no additional notes in the regulations regarding this.
- 6.7 Should the Council decide to agree to the request, it should notify the CTB and specify the terms and conditions of the transfer including requirements for the CTB to submit an offer and the period within which that offer has to be submitted. This should happen within 6 months of the validation date, the decision notice should contain specified information, which is listed in the regulations. If the transfer does not happen within 6 months then the asset transfer request comes to an end, unless there is an agreement to continue. The community body has a right to appeal this decision to the Scottish Government. There are detailed regulations in relation to this.
- 6.8 If the CTB wishes to challenge (a) a refusal of the transfer request (b) any of the terms and conditions imposed or (c) a failure of the Council to make a decision with the required period, then the Council must carry out a review of its decision or the relevant terms and conditions applied to that offer. Ultimately, the CTB can appeal to the Scottish Ministers if it does not agree with the decision following a review..
- 6.9 The draft regulations set out very detailed procedures on reviews and appeals in relation to asset transfer requests. This means that the Council will have to set up a number of similar processes to comply with this guidance and comply with the prescribed timescales.
- 6.10 The Council must also write an annual report on the number of requests it has received, those accepted and those refused.
- 6.11 There are 18 questions in relation to this consultation document. The questions and proposed responses are attached as Appendix 5.

## **7. SUMMARY AND RECOMMENDATIONS**

- 7.1 The Community Empowerment (Scotland) Act 2015 is very wide ranging and broad in its scope. This legislation is principally about removing perceived barriers from people and communities with the aim of further devolving power from local and central government and allowing the community to become more involved in decisions that affect them.
- 7.2 The Act also places greater administration and reporting requirements on local government and other public bodies. This will have significant resource requirements which at this time cannot be quantified. Actively involving people in planning and decision processes is resource intensive but there is no acknowledgement of this within the Act or subsequent draft guidance.

7.3 Additionally, the draft regulations confirm the fact that Council will need to develop processes and procedures in relation to:

- Greater community and individual involvement in Council decision making;
- Participation Requests;
- Register of Assets (including land);
- Community Right to buy land;
- A process and procedure in relation to Asset Transfer Requests including an Appeals Committee;

7.4 In addition to this the following annual reports will now be required:

- A local outcomes improvement plan progress;
- Locality plan outcomes improvement plan progress;
- Participation requests received;
- Asset transfer requests received;

7.5 Further to these reports the following must also be developed by the Community Planning Partnership:

- Local outcomes improvement plan; and
- Locality plans ( number yet to be determined)

7.6 Whilst the issuing of this guidance is helpful it is clear that a great deal of work is required to establish a large number of processes and procedures and work towards full implementation of the Community Empowerment Act. There is no indication of timescales with the exception of the Community Planning Guidance and regulations which is October 17. However we should begin work on establishing the processes and procedures so that we can comply with any early requests.

7.7 It should be noted that there are no additional resources other than the fund listed regarding Participatory budgeting. Officers will continue to advise Members of the work being done to respond to the Act and also when guidance is issued.

## **8. RECOMMENDATIONS**

**It is recommended that the Executive:**

8.1 **note and approve the consultation documents and the responses attached as Appendices 2-5.**

8.2 **approve the work already started in relation to locality planning and participatory budgeting and ask officers to continue to develop this work and to ask for further updates in relation to this work;**

- 8.3 ask Officers to develop processes and procedures in relation to parts of the act where draft regulations have been issued with a view to reporting back to the Executive in the Autumn;
- 8.4 ask for further updates on progress and as further guidance and regulations are issued; and
- 8.5 note that a Seminar will be held for all Elected Members on the latest position of the Community Empowerment Act.

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**DIRECTOR OF CORPORATE & HOUSING SERVICES**

Date: 26 May 2016

Ref: AAB070616LG – Community Empowerment

Contact Name: Linda Gilliland

**LIST OF BACKGROUND PAPERS**

1. Community Empowerment (Scotland) Act 2015

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 506230 and ask for Fiona Campbell.

## **Community Planning Principles**

### **Shared leadership**

- Partners demonstrate collective ownership, leadership and strategic direction of community planning.
- Partners use their shared leadership role to ensure the CPP sets an ambitious vision for local communities; the CPP involves all partners and resources that can contribute towards delivering on that vision; and that partners deliver on it.
- The CPP is clear about how they work with public service reform programmes (including health and social care integration and community justice reforms).

### **Governance and accountability**

- The CPP understands what effective community planning requires, and the improvement needs for it and its partners.
- The CPP and its partners apply effective challenge and scrutiny in community planning, built on mutual trust, a shared and ambitious commitment to continuous improvement, and a culture that promotes and accepts challenge among partners.
- The CPP organises itself in an effective way, which provides platforms for strong strategic decision-making and action, and effective scrutiny and challenge.
- The CPPs and partners can demonstrate how they are working effectively in partnership to improve outcomes as part of how they are held to account.

### **Community participation and co-production**

- The CPP and community planning partners work with community bodies to ensure that all bodies which can contribute to community planning are able to do so in an effective way and to the extent that they wish to do so.
- The CPP and community planning partners have a clear understanding of distinctive needs and aspirations of communities of place and interest within its area, as a result of effective participation with community bodies.
- Effective community participation informs decisions about the CPP's priorities, how services are shaped and resources deployed; this includes working with community bodies on co-production where these bodies wish to do so.
- Effective community participation informs how the CPP manages and scrutinises performance and progress, and how it revises its actions to meet its ambitions as a result of its performance management.
- The CPP engages community bodies in on-going monitoring and evaluation of progress made towards ambitions in their LOIP and locality plans. It also actively engages community bodies in monitoring and evaluating the effectiveness of its community engagement and how it is acting to support effective community participation.
- The CPP embraces the principles of effective co-production which is aimed at combining the mutual strengths and capacities of all partners (including community bodies) to achieve positive change. Understanding of local communities' needs, circumstances and opportunities.
- The CPP has a strong understanding of its local areas, including differing needs, circumstances and opportunities for communities (geographical and communities of interest) within its area.

- This understanding is built on appropriate data and evidence from partners and community perspectives flowing from effective community engagement. Focus on key priorities
- The CPP uses its understanding of local needs, circumstances and opportunities to establish a clear and ambitious vision for its area and identify local priorities for improvement.
- The CPP is clear about the improvement it wishes to make locally in terms of better outcomes for specific communities, reducing the gap in outcomes between the most and least deprived groups and moderating future demand for crisis services.
- The LOIP places a clear emphasis on identifying local priorities which focus on how the CPP will add most value as a partnership to improve outcomes and tackle inequalities, and the CPP targets activities around these priorities.

### **Focus on prevention**

- The CPP and partners recognise prevention and early intervention approaches as core activities which help people and communities to thrive and contribute to addressing poor outcomes and moderating future demand for services.
- The CPP places strong emphasis on preventative measures to achieve ambitious improvement goals on the local outcomes it prioritises.
- CPP partners provide resources required to support preventative measures to the scale required to fulfil these ambitions.
- The CPP utilise the local community understanding of local needs, circumstances and opportunities to design services and focus resources to where it has greatest preventative benefit.

### **Tackling inequalities**

- The CPP has a strong understanding of which households and communities in its area experience inequalities of outcome which impact on their quality of life.
- The CPP focuses its collective energy on where its partners' efforts can add most value for its communities, with particular emphasis on reducing inequalities, so that the aspirations of people and communities.
- The CPP develops locality and thematic approaches as appropriate to address these, with participation from community bodies representing the interests of persons experiencing inequalities.
- The CPP should build the capacity of communities, particularly those experiencing inequality, to enable those communities, both geographic and of interest, to identify their own needs and opportunities; and support their efforts to participate effectively in community planning, including in the co-production of services.

### **Resourcing improvement**

- The CPP and its partners understand how their collective resources are supporting shared local priorities, and whether together these are sufficient and the right resources to enable the CPP to meet its improvement targets.
- Partners demonstrate strong shared leadership by working with other bodies to use collective resources in more effective and efficient ways to improve outcomes and reduce inequalities.
- Partners deploy sufficient resource to meet agreed ambitions for the CPP's local priorities.
- Partners align their collective resources in ways which support its local priorities effectively and efficiently.



- The CPP and its partners keep under review whether partners' deployment of resources remains appropriate for meeting its ambitions, and take corrective action where necessary.

### **Effective performance management**

- The CPP has a deep-rooted commitment to continuous improvement.
- The CPP has effective processes and skills to understand and scrutinise performance.
- The CPP acts wherever appropriate to improve performance in light of this understanding and scrutiny.

**Response on Behalf of Falkirk Council**  
**Community Planning under the Community Empowerment**  
**(Scotland) Act 2015: Consultation on Draft Guidance**  
**Questions**

**Q1:** The guidance identifies a series of principles for effective community planning. Do you agree with them? Should there be any others? Please explain why.

The Council agrees with the principles set out in the draft guidance, as they reflect the Statement of Ambition. The principle of 'shared leadership' is particularly welcome, as this has the potential to make Community Planning more of a balanced enterprise.

There has to be recognition that there is still an imbalance in the leadership of community planning at a local level with regional or national organisations looking beyond local boundaries to deliver services and outcomes.

The Council agrees with the focus on inequalities, as tackling these must be the primary focus of Community Planning. This, if achieved, will give some of our most vulnerable people a better chance in life. Although the guidance highlights many of the behaviours Community Planning partners should exhibit we believe an additional category should be created on 'Commitment and accountability to Effective Partnership Working'. This needs to commit partners to key behaviours which will support 'shared leadership'. Attributes which should be included within this new category, are as follows:

- Resource sharing;
- Local leadership and accountability;
- Joint deployment of resources; and
- Co-location etc.

This will help to ensure that the collective resource of the CPP is focused in the right way, which in turn would further support the Statement of Ambition and the findings of the Christie Commission.

**Q2:** The draft guidance sets out common long-term performance expectations for all CPPs and community planning partners. Each CPP will adopt its own approach towards meeting these expectations, reflecting local conditions and priorities. Even so, do you think there are common short- or medium-term performance expectations which every CPP and partner should be expected to meet? If so, what are they?

The Council agrees the need to focus on inequalities. In support of the CPP's will require to have robust performance management in place, which along with effective scrutiny by Boards will ensure that real progress is being achieved. In securing improved scrutiny care must be taken to ensure that CPP scrutiny approaches are pragmatic, and where possible take into account partner's scrutiny regimes. CPP's should also be encouraged to ensure that their performance management approaches are focused on measuring outcomes, progress and added value, without trying to measure every area of activity the CPP has an interest in.

However this process is about community planning with the focus being in issues and services that are relevant to local people in their communities. The setting of national standards or performance measures sits at odds with that simple principle.

**Q3:** The 2015 Act requires CPPs to keep under review the question of whether it is making progress in the achievement of each local outcome in their LOIP and locality review, and to revise them where appropriate. Even with this, do you think the statutory guidance should require CPPs to review and if necessary revise plan(s). CPPs must from time to time review their LOIP and locality plan(s) under their plans after a specific period of time in every case? If so, what should that specific period be?

Yes	
No	X

Please explain why.

CPP's should be required to review their local outcomes and plans on a frequency they determine, rather than being given a statutory deadline. CPP's however should make a public commitment locally, as to how often their local outcomes / LOIPS will be reviewed.

**Q4:** What should the statutory guidance state as the latest date by which CPPs must publish progress reports on their local outcomes improvement plans and locality plans?

4 months	
6 months	
Other	X

If other please provide timescale. Please explain why.

The statutory guidance must take into account that CPP's are reliant on the already stretched resources of its constituent partner organisations. A minimum standard of reporting once per year should be stipulated within the guidance, with CPP's having the discretion to report more regularly, should they wish to do so.

**Q5.** Do you have any other comments about the draft Guidance?

None.

**Q6.** We propose that the draft regulation for locality planning should set one criterion only, which is a maximum population permissible for a locality. Do you agree? What are your reasons?

The premise for Locality Planning should not be limited by artificially set ceiling, but instead should be based on a sound evidence and rationale. The onus should be placed on CPP's to develop and publish a framework for Locality Planning, which sets out the case on which basis this will be undertaken. This could be on the basis of geographic boundaries, population size, community of interest or a combination of all of these.

**Q7:** The draft regulation sets a maximum population size for localities subject to locality planning of 30,000 residents. It also proposes an exception which allows a CPP to designate a local authority electoral ward as a locality even where its population exceeds 30,000 residents. Are there circumstances in which these criteria would prevent a CPP from applying a reasonable approach to locality planning? What difference would it make to how localities were identified for the purposes of locality planning in the CPP area(s) in which you have an interest, if the maximum population size were set at (a) 25,000 residents or (b) 20,000 residents?

The answer given at Q6 sets out the case why CPP's and their partner organisations should be given full responsibility to develop locality planning frameworks, which are tailored entirely to local circumstances. This preserves local autonomy and flexibility.

The size of a community can make realistic planning and delivery of services problematic if there are not economies of scale or indeed on the other hand a sense of place and belonging. Community Planning Partnerships are best placed to determine the basis of locality planning.

It is hoped that there is a pragmatism by which local areas can develop plans and responses to issues in a way that makes sense for their local areas. Interestingly the 10,000 population was one of the factors considered in the first years of social inclusion partnership which following evaluation across Scotland did not appear to have addressed issues of deprivation and inequalities in a sustained way. It is not clear therefore how this model of planning either differs from that approach.

**Q8:** Do you have any other comments about the draft Regulation?

No

**Q9:** Are there any equality issues we should be aware of in respect of local outcomes improvement plans and locality plans?

There are issues of engagement. It is understood that those most vulnerable and suffering most from discrimination and inequalities will find it hardest to engage with planning processes. There has to be a recognition therefore that such process will take some years to develop and gain credibility. There are also issues of balancing various protected characteristics rights with those who are in poverty.

## QUESTIONS AND A PROPOSED RESPONSE IN RELATION TO PARTICIPATION REQUEST

- 1      Should the use of a statutory form be required in the regulations? Yes**  
**Please give reasons for your response**

A statutory form is to be welcomed as it will allow for consistency of an approach however the example used is not helpful. There needs to be clear guidance on what outcomes the community participation body can ask to be involved in i.e. the strategic outcomes set out in the Local outcomes improvement plans, equality plans, corporate plans etc. There is a suggestion that requests for participation will mean organisation etc. defining their own outcomes and at very different levels. While this in itself makes sense as some people will have a greater focus on very specific issues, if this is managed properly the very stretched public bodies might spend significant resources responding to requests rather than actually improving outcomes.

- 2.      Should it be possible for a community body to put in a participation request without using a form? No**  
**Please give reasons for your response**

There needs to be a formal written mechanism and process to initiate a request, using a specific form makes this clear.

- 3.      What else might a statutory form usefully cover beyond the example set out in Appendix 3a**

More information on the Community Body, is it constituted, what is its membership, is it acting on views of all members or just one, what resources and capacity does it currently have to be involved, what additional support does it think it will need etc.

- 4.      Is 14 days a reasonable amount of time for additional public service authorities to respond? Yes/ No**  
**If not, please suggest an alternative timescale and explain reasons for the change.**

The timescale is tight when we have no way of knowing how many requests will get. It has been suggested that this is the same as FOI in that we give 20 working days.

- 5.      What, if any, are the particular/specific ways that public service authorities should promote the use of participation request?**

Given the current resource pressures would suggest that this is done through website and as part of ongoing work in Communities. However it would be helpful if there was guidance on what outcomes are being referred to.

- 6.      What are the ways that public service authorities should support community participation bodies to make a participation request and participate in an outcome improvement process that should be set out in the regulations?**

Reference needs to be made to the public service authorities own resources and capacity to support this activity as support provided needs to be determined by the resources that

are available. This is additional work at a time when resources are being cut. The ability of the community and voluntary sector particularly through the third sector interfaces to support each other should also be considered.

- 7. What types of communities could the regulations specify that may need additional support? Please give reasons for your response.**

Particularly vulnerable communities might be hard to reach and to include i.e. refugees, gypsy travellers, younger people, people with mental health issues etc.

- 8 How long should the public service authority have to assess the participation request and give notice to the community participation body? Is 30 days a reasonable amount of time? Yes**

This seems a reasonable time-scale but again dependent on how many requests are received. This could be really time consuming and lead services away from planned responses to issues to being more reactive and less focussed. There needs to be a management of expectations of what can be achieved sensibly.

**If not, how long should the period for making a decision be? Please give reasons for your response.**

- 9. Are there any additional information requirements that should be included in connection with a decision notice? Please give reasons for your response**

No comment

- 10. What other information, if any, should the regulations specify should be published in relation to the proposed outcome improvement process? Please give reasons for your response.**

Clear guidance needs to be produced on the outcomes that are subject to an outcomes improvement process, do these relate specifically to local outcomes, the SOLD, Local housing strategy, economic development, equality etc.

- 11. What other information, if any, should the regulations specify should be published in relation to the modified outcome improvement process? Please give reasons for your response.**

No comment

- 12. Section 31 sets out the aspects that the report of the outcome improvement process must contain. What other information, if any, should the regulations require the report include? Please give reasons for your response.**

No comment

- 13. Do you have any other comments on the draft Participation Request (Procedure)(Scotland) Regulations 2016?**

Clear guidance needs to be produced on the outcomes that are subject to an outcomes improvement process, do these relate specifically to local outcomes, the SOLD, Local housing strategy, economic development, equality etc.

It would be useful in the guidance or regulation specify some instances of reasons for turning down a participation request. It is suggested the following areas be considered:

- a) if the service area/function has been subject to a review which concluded in the three years preceding the receipt of a request, this should be a valid reason for refusal of a request;
- b) where the request covers a service area/function of which part has been subject to a review which concluded in the three years preceding the receipt of a request, the request should apply to/be valid for only the aspects which were not included in that review;
- c) where the request covers a service area/function which is currently under review, then either (i) this should be a valid reason for refusal of the request or (ii) the request should be deemed to be part of the current consultation process associated with the review but only from the stage in the review process at which it is received; and
- d) where the request covers a service area/function of which part is currently under review, then either (i) this should be a valid reason for refusal of the request insofar as it relates to that review or (ii) the request should be deemed to be part of the current consultation process associated with the review but only from the stage in the process at which it is received. [In either case, the request would presumably remain valid for the aspects which are not under review.]

It would also be useful if a specific question is included that asks if a requestor is expecting or requesting an increase in resources being allocated to a particular outcome.

**COMMUNITY EMPOWERMENT (SCOTLAND) ACT 2015  
PARTICIPATION REQUEST  
APPLICATION FORM**

**1. Details of Community Body**

Name of Community Body:

Contact address:

Telephone number:

Email:

Website:

**2. Public Service**

Note 1

**3. Outcome**

Note 2

**3 Why community participation body should be permitted to participate**

Note 3

**4. Knowledge, expertise and experience the community participation body has in  
relation to the specified outcome:**

Note 4

**5. Outcome Improvement**

Note 5

**Application Form Notes**

1. here specify the public service or services the provision of which results in or contributes to outcome specified under paragraph 3
2. here specify the outcome that results from, or is contributed to by virtue of, the provision of a service provided to the public by or on behalf of the authority.
3. Here set of the reasons why the community body believes it should participate in the outcome improvement process.
4. Provide details of any knowledge, expertise and experience the community body has in relation to the outcome specified in paragraph 3.
5. Provide an explanation of the improvement in the outcome specified in paragraph 3 which the community body anticipates may arise as a result of its participation in an outcome improvement process.



**QUESTIONS AND A PROPOSED RESPONSE IN RESPONSE TO PROPOSALS  
RELATING TO  
PART 3A OF THE LAND REFORM (SCOTLAND) ACT 2003**

1. **This refers to prescribed matters which ministers should have regard to when considering if land is eligible or not to be described as abandoned or neglected land or land where the management of it is causing harm to the environmental well-being of the relevant community. The question asks if we agree with the matters or not.**

We disagree with the matters as it is not clear how future potential commercial or residential sites are to be treated e.g. sites with 'hope value' on the list.

**Are there matters you believe should be added?**

A clearer definition of abandoned land would be helpful to be included.

2. **This refers to land pertaining to a person's home might include a number of elements – these are included in the curtilage of a person's home, question 2 asks if we agree that the land listed is included as part of a person's home.**

We agree with the list and have no amendments.

3. **The next question relates to descriptions or classes of occupancy or possession which should be treated as a tenancy, we are asked if we agree with the definition used.**

We agree with the list and have no amendments.

4. **This question is about regulation and lists appropriate regulators the question asks if we agree that a regulator should be described as a person, body or office holder that has the power to carry out regulatory duties.**

We agree with this definition.

**A supplementary question asks if we think anyone should be added or taken away from the list provided.**

We have no suggestions regarding this.

5. **This question concerns the date that prohibition or suspension of rights will come into operation regarding any land, this will be the date of the receipt of a valid application, we are asked if we agree with this.**

We agree with this.

6. **This question is about the date prohibition or suspension of rights is lifted we are asked if we agree with the list of proposed dates and circumstances.**

We agree with this.

7. **This question suggests that a landowner or a creditor in standard security with a right to sell the land should be subject to the prohibition of the sale or transfer of the land under the relevant sections of the Act.**

We agree with this.

8. **The next question sets out what would be prohibited and also the transfers and dealings that are not subject to these regulations. We are asked if we agree with this.**

We agree with this.

9. **This question sets out proposals concerning the rights which are suspended when a valid application is made under part 3A. We are asked if we agree with these.**

We agree with these.

10. **This question asks about the provision for or in connection with enabling a Part 3A community body to apply for the cost of ballot expenses to be reimbursed, a set of circumstances are listed. We are asked if we agree with these.**

We agree with these.

11. **This question concerns the procedure a community body would use to apply for reimbursement of the full cost of conducting the ballot. Again we are asked if we agree with these.**

We agree with these.

12. **The final question sets out the process whereby a landowner or can seek compensation from a community body should the community body withdraw or fail to complete the purchase. We are asked if we agree with this.**

We agree with this.

**QUESTIONS AND A PROPOSED RESPONSE IN RESPONSE TO  
ASSET TRANSFER REQUESTS**

- 1 Do you agree that the types of land set out in the draft Community Empowerment (Registers of Land) (Scotland) Regulations 2016 need not be included in relevant authorities' registers?

Yes

If not, please explain what you would change and why.

- 2 Are there any other types of land that relevant authorities should not have to include in their register? Please explain what should not be included and why.

Refuse sites and cemeteries/crematoria. The nature of such land does not lend itself to community ownership. In addition we would suggest the following are not included:

- Scheduled Ancient Monuments (SAMs)
- Sites of Special Scientific Interest (SSSIs)
- Local Nature Reserves (LNRs)
- Local nature conservation sites
- Roads, cycle ways, footways and footpaths, drains, bridges and other structures

3. Do you have any comments on the proposals for guidance on what information registers should contain and how they should be published? No
4. Is there any information you think a community transfer body should be able to request from a relevant authority, that it would not be able to obtain under FOISA or the EIRs?

No

5. Do you think the proposed additional requirements for making an asset transfer request are reasonable? Yes

If not, please explain what you would change and why.

6. Is there any other information that should be required to make a valid request?

No

7. Do you have any comments on the proposals for acknowledgement of requests?

No

8. Do you have any comments on the proposed requirements for notification and publication of information about a request?

No

9. Do you think 6 months is a reasonable length of time for the relevant authority to make a decision on an asset transfer request? (This time may be extended if agreed with the community transfer body.)

Yes 6 months is reasonable unless the authority inundated with requests which causes resource issues to meet the deadline.

If not, how long should the period for making a decision be?

10. Do you agree with the proposals for additional information to be included in a decision notice? Yes

If not, please explain what you would change and why.

11. Do you agree that the Scottish Ministers should be required to appoint a panel of 3 people to consider reviews of Ministers' own decisions? Yes

If not, how do you think these reviews should be carried out?

12. Do you agree that a local authority should be required to make a decision on a review within 6 months? Yes

If not, how long should the period for making a decision be?

13. Do you have any other comments about the draft Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016 or draft Asset Transfer Request (Appeals) (Scotland) Regulations 2016? No

14. Do you agree that the Scottish Ministers should appoint a single person to consider an appeal where no contract has been concluded? Yes

If not, how do you think these reviews should be carried out?

15. Do you agree that the documents should not be published in relation to appeals where no contract has been concluded? Yes

Please explain your reasons.

16. Do you agree that no third party representations should be allowed in relation to appeals where no contract has been concluded? Yes

Please explain your reasons.

17. Do you have any comments on the proposed procedures for appeals where no contract is concluded?

The proposals seem sensible

18. Do you have any comments on the proposed procedures for applications to Ministers for Directions?

No