

Community Empowerment and Renewal Bill



RESPONDENT INFORMATION FORM

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

1. Name/Organisation

Organisation Name

Falkirk Council

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

Surname

Mary

Forename

Pitcaithly

2. Postal Address

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Postcode

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Email

mary.pitcaithly@falkirk.gov.uk

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

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

4. Permissions - I am responding as...

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

Please ensure you return this form along with your response.

Thank-you.

Community Empowerment and Renewal Bill

CONSULTATION QUESTIONS



PART 1: STRENGTHENING COMMUNITY PARTICIPATION

Community Planning

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

There are significant challenges in delivering effective community engagement in the Community Planning process:

- Community members are often most concerned about issues that directly affect their locality or community of interest, rather than general plans for the local authority area.
- The formal Community Planning process can be somewhat distant from the everyday concerns of community members if the engagement only happens on an annual, or less frequent basis.
- As with all community engagement involving local authorities, a complex balance needs to be struck between the existing role of democratically elected members of the Council, and the voices of individuals and organisations in local communities. In particular, there are often concerns about how 'representative' community voices may be.

Effective community engagement is therefore often at a more local level, and/or focused on more specific issues than the broad Community Planning process. Clearly it is important for CPP's to engage with communities when setting their vision for the area, and deciding on the outcomes that the CPP should aim to achieve. The Community Plan should contain a clear statement of the community engagement process utilised in the development of the Plan.

Perhaps more importantly, the CPP should have a clear strategy to engage communities in the delivery process. This may be done separately for each outcome (or group of related outcomes), as the engagement process is likely to be different for different issues, outcomes and service areas.

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

There is a reasonable degree of community engagement which feeds into the overall Community Planning process. This has some influence on the Community Plan. There are also a number of specific examples in Falkirk of very effective engagement in particular aspects of Community Planning, such as the involvement of young people in planning services for children.

However, this engagement at a strategic level is not always joined up well to

more local or service-specific engagement. In Falkirk we are trying to create a much more co-ordinated system for consultation and community engagement, which is beginning to address these issues.

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

As noted above (Q1), it may be beneficial to require CPP's to set out how communities will be engaged in the delivery process of the Community Plan/SOA. One option would be to require clear statements in either the Community Plan, outlining the proposed community engagement process in the delivery of the Plan. This could be done separately for each outcome (or group of related outcomes), as the engagement process is likely to be different for different issues, outcomes and service areas.

An overarching duty to engage

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

We agree that there can be some confusion caused by the number of different types of legal duties relating to community engagement. In Falkirk we have tried to create a more coherent system for coordinating engagement activities across the Council, but this is difficult at times when different Services face very different legislative requirements. Part of the difficulty relates to different levels of required engagement, and this is exacerbated by the use of different language (or the same language meaning different things) in the various pieces of legislation.

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.

It would be far simpler for local authorities and communities to approach community engagement if the language and legal requirements were consistent. Having said that, it may cause considerable confusion and/or loss of momentum in existing engagement activities if the existing duties were completely replaced by a new over-arching duty. We would therefore suggest that an over-arching duty should be added to existing duties, and that guidance and/or legislation in specific service areas could gradually ensure consistency between the specific duties and the over-arching duty over time. Furthermore, the development of any over-arching duty should be done in discussion with relevant professional bodies and representatives of communities.

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

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

As noted above, the transition from specific duties to an over-arching duty would be important to consider.

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

There is a significant challenge in creating an over-arching duty that is specific enough not to be meaningless, but general enough not to impose excessive duties on every corner of public service. Hence a combination of over-arching and specific duties may be necessary. Thus, the over-arching duty could set out a basic requirement for public services to work with communities in planning and delivering services, possibly incorporating some principles as to how this should be approached, whilst the specific duties could set out more detailed requirements for specific service areas. For example, it may still be appropriate to have specific duties relating to tenant participation, including the registration of tenants' organisations, but these duties would not be appropriate for many other areas of public service. Over time, the specific duties could be amended/updated to ensure that they fit with the over-arching duty.

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?

Community Councils can potentially play a very significant role in helping to ensure that communities are involved in the design and delivery of public services. Many Community Councils have substantial experience and skills in community engagement processes and can act as efficient and effective conduits between public sector agencies (especially local authorities) and local communities.

However, it is also clear that this is unfortunately not true of all Community Councils, and that insularity, apathy or lack of necessary skills can severely hamper their ability to gather or represent the views of their community. This difficulty can be exacerbated by an assumption that most Community Councils fit this description.

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

The role of Community Councils in delivering public services is not likely to be any different from that of any other local community organisation. Where a community organisation has an interest in delivering services and can demonstrate competence, public services should support the possibility.

There is also a risk for Community Councils that a focus on service delivery could undermine their core purpose in gathering and representing the views of the local community.

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

Our view is that there is no change required to the existing legislation to help Community Councils maximise their positive role in communities. The challenges lie in the support provided to Community Councils to develop their skills and to help them effectively represent the views of their communities. It would not be appropriate or useful to impose any new duties on either local authorities or Community Councils through legislation, although it may be productive to use guidance to encourage Community Councils to better represent the views of their local community.

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?

Where third sector organisations work closely with communities, they can help Community Planning Partnerships to engage effectively with those communities. Such arrangements are already in place in some areas. Third Sector Interfaces can also play an important role in terms of co-ordinating the input of voluntary sector organisations, and supporting community sector organisations to have a stronger voice.

The third sector as a whole is very diverse, so we do not feel that any legislative changes or statutory guidance would be helpful in this area.

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

The National Standards for Community Engagement are most usefully applied as a monitoring tool, to measure the quality of community engagement (e.g. through the VOiCE database). If the National Standards were to be incorporated into legislation or statutory guidance, it would be important not to create the impression that the Standards can be simply 'met' or 'not met'. In particular, it would be important not to impose a restrictive duty which could lead to legal arguments about whether the Standards had been met in particular circumstances.

It may be useful to include the National Standards as principles in an over-arching duty, should this be created. Something like the following wording could be appropriate: "Public agencies should use the National Standards for Community Engagement when planning, undertaking and evaluating their community engagement activities." It must be remembered that the national standards are broad principles and are open to a variety of interpretation.

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

There are two aspects to this. As noted above (Q1), it may be useful to require CPP's to outline how they intend to engage communities in the delivery of their Community Plan. We already have a Community Engagement Strategy for Falkirk Council, and we have expressed our intention to extend this Strategy to cover the whole of the CPP in due course. Such an over-arching strategy/plan helps to improve the coordination of community engagement across the Council/CPP, and also helps community members and organisations to know what to expect. However, any legislative duty would need to be worded carefully, to ensure that it does not restrict the options for locally-shaped engagement.

There are also existing requirements (e.g. Development Plan Scheme, Tenant Participation Strategy) to publish and communicate particular community engagement plans in relation to particular plans/services. Any over-arching duty to publish a general community engagement plan would need to fit with such existing specific duties.

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

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

There are some general points which should be included:

- The principles which will underpin community engagement (generally this would be a restatement of the National Standards, especially if these are given a statutory basis).
- The general structures and mechanisms which are already in place and/or will be developed over the period of the plan (e.g. Community Councils, RTOs, Citizens Panels, etc.) and how they fit together in terms of community engagement.
- How the Council/CPP will communicate in relation to community engagement – i.e. how engagement opportunities will be communicated, and how feedback about results and outcomes will be communicated after an engagement process.
- How the plan will be monitored and evaluated, to make improvements over time. This should include a statement of how communities will be involved in the monitoring and evaluation (as is the case with our Strategy in Falkirk)

In addition, the plan itself should be developed through a community engagement process, so it would be useful for the plan to outline how this process has happened and how it has shaped the plan.

As noted above (Q1), it may be appropriate for the plan to include more detail on the specific approaches to community engagement which will be used in relation to specific outcomes or services.

Auditing

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

If the principle is accepted that community participation is key to effective Community Planning (as the Statement of Ambition makes clear), then it is important for community participation to be a key part of the audit of Best Value and Community Planning. Having said this, it will be important to learn from the experience of the second round of audits, as community participation is already a significantly larger part of these audits than it was during the first round. It may or may not be necessary to further enhance the role of community participation in the audits.

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

There are an increasing number of officers across local authorities who have some responsibility for community participation in their service area. In our experience, there is considerable value in having a named officer who has responsibility for coordinating this activity, and who can act as a primary

point of contact for communities.

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

This is not an issue that has been raised with us by Registered Tenants' Organisations in our area. Perhaps it would be beneficial for the Scottish Government to seek tenants' views directly on this issue, via RTO's.

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

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

Elements of the 'Public Social Partnership' approach to commissioning could be used more widely to support community involvement in service commissioning. Such an approach can also help to build the capacity of community groups to deliver services, through partnership working with larger voluntary sector organisations.

The use of community benefits clauses in contracts could also help to build community capacity, if these required larger service providers to co-produce with smaller community organisations and individual service users.

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

Arguably communities already have the right to challenge service provision, through contact with elected Members, use of formal complaints procedures, appeal to ombudsman, etc. If a specific legislative right to challenge were to be introduced, there would need to be a clear process for

such a challenge to be addressed, and it would need to be clear how this would fit with existing processes.

Any new 'right to challenge' should also attempt to address issues of 'ability to challenge', to ensure that all communities are enabled to use the right equally.

We also think that the wording of any right to challenge should relate to service being run 'effectively' rather than 'efficiently', as it is not clear that communities would be in a position to judge efficiency.

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

Our answer to this question is actually 'yes, but...' As outlined in response to other questions, we agree with the general shift towards community participation in service planning and delivery. This will be particularly important in coming years, as co-production with communities can help to maintain some services which might otherwise be reduced for budgetary reasons. Hence there is a sense in which communities will have a greater role in deciding how budgets are spent, as they become more involved in the overall planning of provision.

However, the reality of local authority budgeting is that budgets are not generally constructed by area, but are allocated according to overall priorities and needs across the Council area. Hence it can be challenging to involve communities in deciding on budgets at a local level, particularly as budgetary pressures make the overall allocation process more difficult. This is particularly true in technical areas such as road maintenance, where expenditure is allocated most efficiently through a process of expert technical assessment combined with use of increasingly sophisticated electronic survey tools. Similarly, there are areas of spending where the complexity of multi-partner funding and consequent timescale issues would often make any form of participatory budgeting impossible, since the funding would not be available by the end of any participatory process.

Nevertheless, there are some successful examples where specific budgets (e.g. for local community projects) are decided in a participatory fashion at a local level, so it may be appropriate to encourage this more widely. Furthermore, it is important to recognise that local authorities already undertake a range of activity which could be called follow this principle. There are numerous instances in which communities are directly involved in setting overall priorities for spending (including the identification of potential savings in the current financial situation), or in deciding on specific project spend, which are very successful. It may be difficult to attract community participation in budgeting when making decisions on service cuts. We would be particularly concerned to ensure that any further legislative provision in this area does not undermine existing consultative or participatory

processes. It is also important to recognise the role of elected Members in deciding local authority budgets, and the fact that Members already provide democratic accountability for budget decisions.

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

It is not possible to give a clear 'yes' or 'no' to this question, as there are too many uncertainties involved. The key issues here are what a 'right to request' might mean in practice, and what the areas of spending might be. There may be situations in which community management of particular areas of spending can create significant benefits in terms of co-production. However, there are significant issues of accountability, financial control, best value and relations with other public services, which would need to be resolved for this to work. It may, in addition, be worth consideration as to whether any procurement and/or state aid issues could arise under certain circumstances.

There are also areas of public spending which are never likely to be appropriate for community management, because of the need for economies of scale, or related issues.

If a 'right to request' were to be introduced, it would be important to ensure that it does not create significant additional burdens on public agencies in responding to such requests, and that the local authority retains a right to refuse such a request where the transfer of control would not be practicable..

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?

As noted above, this is one of the key uncertainties in relation to community management. It would be very difficult to give a definitive answer, but it is clear that legislative duties may make it impossible to transfer some areas of spending to community management. Moreover, it may be extremely difficult to transfer management to local community organisations when the majority of local authority budgets are decided at a whole Council area level, not devolved to a community level.

Furthermore, it would not seem to be appropriate to create general rules – any community management would need to be community-driven, so the key factor would be the drive, interest, and skills of the local community.

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

The question is not really what body should make decisions, but how accountable they are. Local authorities are democratically accountable to their local areas, and any community management initiative would need to ensure at least a similar level of democratic accountability to the local community.

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?

Any 'right to request' system would need to include a procedure for assessing the democratic processes to be used for budget decisions.

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

Clearly one of the key issues throughout the Bill will be the definitions of 'community' and 'community organisation'. We believe that there are some key issues linking these definitions – community organisations must be representative of their community, accountable to their community, transparent in what they do for their community, and properly constituted to ensure that their representativeness, accountability and transparency are sustainably established.

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

There should not be an automatic right to buy, but when a case can be made that community ownership is demonstrably the better option, then a community right to buy may be appropriate. There is a need for well defined “public interest” test, including an assessment of the community organisation’s ability to use and maintain the asset for community benefit. Safeguards would also be needed to ensure that organisations wishing to purchase property are sufficiently robust and sustainable, and to address situations where community organisations disband, to avoid negative impacts on communities. This would be particularly important in situations where a community had used such a right to purchase a public sector asset, as the collapse of the organisation could mean that the asset is lost to the community.

The key factor in determining the success of right to buy for urban communities (as it has been for rural communities) would be funding, both in terms of actual purchase costs, and in terms of resourcing support to communities to exercise the right.

We would also suggest that the terminology of ‘right to buy’ may be problematic – see Q33 below.

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)?

Yes, largely.

b. How should an ‘urban community’ be defined?

The use of ‘postcode units’ to define urban communities is probably not appropriate – there will be many instances where a local community would not themselves identify with postcode areas. There is also an argument to say that ‘communities of interest’ should be included (e.g. if disabled people wished to purchase a building to provide an accessible venue), although we recognise that this would be much more complicated to include in the legislation.

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

If there were to be an urban and rural community right to buy, it should be possible to merge these in legislative terms, so that they become a single community right to buy, with specific clauses for urban and rural communities.

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?

As a local authority, we already have the power to transfer assets to local communities where we consider it appropriate. Any transfer has to be to a properly constituted organisation with appropriate governance arrangements in place. The conditions of any transfer need to be carefully considered, particularly in relation to the issue of whether a market valuation is to be used, or whether the asset should be transferred at below market value if, for example, the community were to be taking on ongoing maintenance or running costs obligations, or providing additional benefits in other ways. An appropriate business case, including option appraisal should be undertaken for such proposals.

As with Q21, safeguards are needed to ensure that organisations wishing to purchase property are sufficiently robust and sustainable, and to address situations where community organisations disband.

Please also answer parts a. to d. below:

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

Relevant information on the status of the organisation to ensure that it is sufficiently robust to adopt the responsibilities involved in management of an asset, together with a business plan for the use of the asset.

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

In relation to the assets involved, performance information e.g, any existing condition surveys, backlog maintenance information, annual running costs etc. would need to be shared and fully understood by all involved.

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?

To disclose such information as it currently holds in terms of a) above, on a for information basis.

-
- 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?

To accept the premises (or land) in existing condition and to undertake to carry out all necessary repairs, maintenance, renewals etc. at their expense over an agreed timescale. Transferring bodies may wish to retain the option (but not the obligation) to resume asset in the event of default. The community group should also be able to demonstrate that it has the organisational capacity to accept these responsibilities.

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

As with Qs 21 and 22, communities should have the power to request, but decisions about actual transfer should be subject to public interest test and a clear definition of those assets that are deemed unused or under-used. As above basis of valuation needs to be agreed on an equitable basis reflecting condition, ongoing liabilities of transfer etc.

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

This should not be automatic – needs to be based on an evaluation of how effectively the community has managed the asset under their stewardship and do they have the capacity to do so in the future, more effectively than the public sector, in the context of broader strategic considerations. Similar caveats apply to those mentioned in Q21.

There would also need to be a clear reason for moving to purchase if the lease situation is working well.

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

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

As above – community organisation would need to demonstrate effective stewardship during the management/lease period, plus organisational sustainability and a business plan for the future use of the asset.

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

Yes, given the relative complexity of the law in this area, and the degree of restriction or alienation of the assets involved. There has, historically, been some dubiety over the role of Community Councils in relation to common good assets, and there are often issues in applying common good assets which are restricted to former burghs, as these are not the same as current local authority areas.

It would be preferable for these barriers to be removed where a new 'common good' can be achieved by overcoming these restrictions, particularly since most of these assets were created many years ago, circumstances have changed, and the original purpose may no longer be relevant. Ideally, it should be possible for common good assets to be used for the benefit of the whole local authority area, perhaps with a new definition of the 'common good'. This would enable the financial elements of common good assets to be managed alongside existing small grants funds provided by the local authority, creating greater transparency and improving access for communities.

In addition to tackling the complexity of law around common good assets, it would be helpful if a similar simplification could be achieved for trusts, where local authorities have been made responsible for bequests. The vast majority of these are very old, often their original purpose is no longer appropriate, and sometimes the paperwork has been mislaid over the decades. Ideally the law should be simplified so that these bequests can be used by the local authority for broader common good purposes after a period of time.

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

Yes ☒ No ☐

Please give reasons for your response

Although the current complexity of managing common good assets can take up a lot of officers' time, it still seems appropriate for these assets to be looked after by local authorities, as democratically accountable bodies.

If a simplification and clarification of the existing law relating to common good assets (as suggested in response to Q25) can be achieved, the question of control may be dealt with by earlier questions relating to 'right to buy', etc. If common good assets could be treated more like other public assets, then it would be possible to apply any new or existing community rights to request control or purchase.

Assuming local authorities retain control of common good assets, at least in the short term, it may be appropriate to require a degree of consultation in relation to their allocation, although any such requirement would need to be carefully worded, so as to avoid excessive burdens, relative to the size of the assets.

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?

As outlined above, if some of the restrictions around common good assets can be simplified and/or removed, then it would be appropriate for local authorities to account for these assets as part of the overall estate, although it would still be appropriate for the assets to be explicitly identified within the local authority's accounts. The local authority should retain a duty to apply the common good assets for the 'common good', although it may be useful to clarify this definition, as mentioned above.

- 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?

As mentioned above, it may be appropriate to have some degree of consultation or community involvement as a requirement for the allocation of common good assets, particularly if the restrictions around such assets are to be relaxed. However, any such a requirement would need to be worded carefully to avoid being excessively burdensome, and to allow for local arrangements to be made.

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

We cannot see any reason why this should not be required, given these form the basis of the relevant figures included in the Annual Report and Accounts.

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

a. What information should the asset register contain?

Potentially the whole Asset Register, including property address/UPRN, depreciated valuation.

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

We already make our asset management plans available to the public via our website, for reasons of openness and transparency, so we would have no objection to this.

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

a. What information should the asset management plan contain?

Consistent with current best practice per CIPFA, RICS, Improvement Service, Audit Scotland etc. guidelines, including property performance indicators – e.g. condition, suitability, energy performance. There may be a requirement to reinforce the treatment of community based assets in asset management plans to address the issues raised in this paper.

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

Yes, there is a definite need for co-ordination and for these tasks to be resourced as part of a 'day job'.

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

We are not sure that any other means of access to information is necessary, given that the Freedom of Information Act facilitates access to most forms of information from the public sector.

Allotments

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

None at present.

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

None at present. However, it would be helpful to have some national research on the demand for provision of allotments, with advice on, for example, community food growing projects, provision of new ones, size, layout, site suitability, constraints with regard to previous land use, and design.

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

As noted above (Q21), we have a slight concern about the use of the term 'right to buy' in the context of urban communities. Because 'right to buy' has been long established for Council housing, the use of this term may give the impression that a new 'community right to buy' would operate in a similar way, although this is clearly not the case for the existing rural legislation.

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

There should be agreement on definitions of unused/underused assets and a clear process established over the rights of communities to use these. As per questions 21-24, it should not be an automatic right to use, but there should be a clear system for communities to request this right, and for decisions to be taken, including a clear public interest test.

One option would be to have a single system for right to buy, right to use/lease, and right to request for management. Leases and temporary licences can offer an option to enable community use, where community purchase/ownership would not be an option.

We also think that the Scottish Government could potentially tackle some of the barriers regarding accessing funding for leased buildings. In many cases a lease may be the best option for both the community organisation and the public sector organisation, but if funders are unwilling to finance work on buildings that are not owned by the community organisation itself, this creates a pressure to move towards purchase. We recognise the complexities of this issue for funders and the limited powers of the Scottish Government, but we would suggest that more could be done to address this issue without pushing more community organisations towards asset ownership if they do not want to go down that route.

If you said yes to Question 33, 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?

As per previous questions, where an asset is unused/underused, a public interest test demonstrates that community use/management will deliver added value, and the community organisation can provide evidence of capacity and sustainability, then this would be appropriate.

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

A requirement for the asset to revert to the public body if the venture fails.
Agreed purposes for the use of the asset, to ensure that public interest test remains valid over time.
As with normal leases, conditions around maintenance, insurance, etc.

c. What types of asset should be included?

Land and property assets should be considered.

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

It is preferable that proposals for temporary community use are approved through normal planning procedures.

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

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?

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?

Re-introduce charging orders on the property would assist but recovery of cost would remain difficult due to lack of movement in property market. Therefore, financial burden stays with the local authority for many years.

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

Based on current experience communities are likely to make most requests about buildings, structures and caravans which are merely ugly, need painting or minor maintenance, or are empty.

Hence our concern is that any new process for requesting a local authority to use these powers could be fuelling expectations that cannot be delivered and raise expectations that such involvement or empowerment will resolve unsightly or unmaintained properties. This legislation places the onus on owners to repair or secure their property from endangering the public or other users, if and when they can be located during these difficult financial times with little or no access to funding. Also in relation to defective buildings this legislation is directed at significant defects that may result in the building becoming dangerous in a relatively short period of time if left unchecked, which differs from the Housing (Scotland) Act that deals with repair and maintenance issues.

Furthermore, we would suggest that there should be further thought by the Scottish Government regarding possible funding and cost recovery mechanisms in situations Councils deem it unavoidable to undertake the necessary repairs themselves (when owners are unwilling or unable to address property issues) and how that cost may be recovered in a relatively short period of time.

The current reporting and investigation of such properties are adequately supported in current regulations but the recovery of cost where work is undertaken is not.

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

Several issues arise in the matter of involving the community more closely in the use by their local authority of compulsory purchase powers. It is important to recognise that the scenario presented at para 90. is similar to recent examples which this Council has been called upon to deal with, i.e. abandoned houses in predominantly residential areas which are causing a blight or disamenity and which have prompted strong adverse reaction from neighbouring residents. This Council has responded to these concerns and is in the process of promoting CPO's.

Subject to some of the concerns expressed below, in general this Council would not be averse to amplifying the rights of properly constituted community bodies to request a Council to utilise CPO powers on their behalf. However we would make the point that some of the enabling legislation (particularly the Housing (Scotland) Acts of 1987 and 2006) is confusing and could be clarified, particularly in the disapplication of s95(4) in respect of houses and the interaction with s189 of the Town and Country Planning (Sc) Act 1997.

The following issues would need to be resolved if such a right to request were to be introduced:

- Clear parameters for the circumstances in which such a request could be made would have to be established, e.g. there would have to be a clear and substantial case linked with clear community focussed objectives that would be capable of satisfying the public benefits tests inherent in the CPO regime
- There would have to be a clear and focussed enabling power which was rooted in achieving a community objective, whether that be with a specific project in mind or to alleviate some tangible blight.
- The local authority would need to have complete discretion as to whether to proceed with any CPO, as such actions attract considerable costs and the liability to pay compensation to affected parties, none of which may have been budgeted for. Similarly local authorities could be inundated by such requests, all of which could be perfectly laudable but resources, both financial and in terms of staff may dictate that priority has to be given to some over others. This could create serious issues for the Council in managing the expectations of local communities.

Given the potential additional costs of such a system, we would suggest that central government funding should be available for such community-driven projects, to make the spirit of such a change a reality.

If you said 'yes' to Question 39, please answer part a.:

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

It would need to ensure that the local authority can access the resources to ensure that the CPO can be fully enacted.

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 with earlier questions, the key issue is whether a 'right to request' leads to an automatic right to take over.

Whether the community should have a right to take over the property very much depends on the nature of that property and the intended use. For example, if it is an abandoned house in the middle of a residential estate, there would appear to be more merit in the Council trying to bring that property back into residential use, either in partnership with an RSL, through its own housing provision, or marketing the property for sale on the open housing market. Where the property is not residential (e.g. an area of open space or disused commercial premises) there may be more scope for an eventual community-based use which the requesting group could take on. The initial application from the Community group would need to contain a robust plan for the eventual use of the property.

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

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

- The issue of best value would have to be addressed, in particular if the Council is to underwrite the acquisition and compensation costs. Whilst there may be scope within the legislation and regulations to transfer the land at less than full value, consideration would need to be given to embedding some sort of clawback or redemption in the transfer title obliging the community group to use it for a particular purpose and in the event of them transferring it for a non community related purpose for the value of the land to be remitted to the local authority
- The local authority could only transfer the property to a properly constituted and represented body. This raises the issue over proper representation for that body and who pays for this. For legal issues relating to the transfer of title and associated conditions and documentation, local authority solicitors would be prevented from representing such bodies so their advice would have to be sought from external sources, all of which will come at a cost and may act as a disincentive for community organisations considering such a move.
- It may be that ownership of property (or a long lease thereof) would enable community bodies to avail themselves of other avenues of funding. If so conditions would have to be attached to any transfer obliging redevelopment in a reasonable period of time to align with the funding streams sourced by the community body
- In general it is crucial that a community body is robust and sustainable enough to see a project through. This would form another major plank of their application to the Council to use 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

A wide range of factors and circumstances result in homes being left empty. Such a move would extend the tools available to local authorities to effectively manage empty homes. Increasing the available options should increase the likelihood of achieving a positive outcome for each empty home.

The use of the power to sell or acquire empty homes will largely be resource dependent.

If you said 'yes' to Question 41, 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?

The following circumstances are likely to influence decisions on whether and when to enforce a sale:

- Owner's non-engagement with local authority officers,
- Engagement but with no positive progress over a period of time (period will be dependent on the condition of the property)
- Property condition failing Repairing Standard/ Tolerable Standard
- Risk of property condition deteriorating further
- Environmental health concerns
- Anti-social behaviour based concerns
- Negatively impacting on the aesthetic look of an area/ blighting an area

In addition to the above points, the decision to enforce the sale of a property should reflect the needs, demands and priorities identified within the Local Housing Strategy.

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

Local authorities can do this currently – subject to the owner's agreement.

Also see our response to Question 42a. The decision to lease or sell a property is likely to be related to the needs, demands and priorities identified within the Local Housing Strategy.

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

As it would restrict the owner's right to determine the future use of the property, applying to the courts would seem to be the appropriate route for any such order.

This would give additional force to the case for such proposals to be implemented.

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

The responsibilities here need to be clarified. Councils currently have these powers for disposal of their own assets. Should the proposal be for local authorities to be given powers to force other owners to sell or lease their property this is worthy of support. It would require further work to prepare a business case and apply sufficient safeguards to the local authority.

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?

This might apply in situations where an unused asset causes significant blight or impedes development in the interests of the community.

The factors listed in response to Q42a would also be relevant here.

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?

Local authorities can do this currently – subject to the owners agreement.

The factors listed in response to Q42a would also be relevant here.

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

As it would restrict the owner's right to determine the future use of the property, applying to the courts would seem to be the appropriate route for any such order.

This would give additional force to the case for such proposals to be implemented.

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

As lead body it is appropriate that the Council should have this role.

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?

Where a robust business case is presented.

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

Definitions within existing legislation relating to poor property conditions may be of relevance to any new legislation which sets out the circumstances in which forced sale or lease of empty homes can take place e.g. Civic Government Scotland Act 1982 (as amended) and the Housing (Scotland) Act 2006.

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?

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?

A number of the ideas within this consultation paper relate to relatively complex processes (e.g. asset transfer, CPO's, etc.) which require significant knowledge and skills to navigate. Hence there is a risk that these ideas may be of significantly greater benefit to relatively affluent communities, where there may be individuals with legal, financial, or other relevant skills. The Scottish Government should consider what supports are necessary to ensure that any of these ideas provide greater community empowerment for more disadvantaged communities, not just those with the skills and knowledge to use them unaided.

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?

There may be issues of sustainability to be considered in situations of 'right to buy' – i.e. it may be necessary to ensure that community organisations have the same duties as public sector agencies in terms of environmental impact (without placing an overly onerous duty on them regarding impact assessment or similar).

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?

Thank-you for responding to this consultation.

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